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SUPREME COURT OF THE UNITED STATES.

No. 360.

THE UNITED STATES, EX REL. J. EDGAR THOMSON, PLAINTIFF IN ERROR,

vs.

THE CITY COUNCIL OF KEOKUK, IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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a *Writ of error to the Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment, in the circuit court of the United States for the northern district of Illinois, before you, between the United States, at the relation of J. Edgar Thomson, and the city council of the city of Keokuk, Iowa, respondents, a manifest error hath happened, to the great damage of the said J. Edgar Thompson, relator, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and that full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington, D. C., on the fourth day of December next, in the said Supreme Court to be then and there held, that the record and proceedings
b aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

[SEAL.] WM. H. BRADLEY, *Clerk.*

c *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the city council of the city of Keokuk, Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, (1865,) pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the United States, at the relation of J. Edgar Thomson, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable , one of the justices of the said Supreme Court of the United States, this 28 day of Nov., in the year of our Lord 1865.

THOMAS DRUMMOND, *U S. Judge.*

KEOKUK, IOWA, *December 1st.*

Rec'd a true copy of this citation, and due and legal service of this writ on respondent is hereby acknowledged.

H. STRONG, *Att'y for Def'ts.*

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-room in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, district judge of said district, associate judges of said circuit court, on Tuesday, the seventeenth day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth year.

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thomson, *vs.* THE CITY COUNCIL OF THE CITY OF KEOKUK, in the State of Iowa. } Petition for writ of mandamus.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty-five, the United States, on relation of J. Edgar Thomson, by H. Scott
2 Howell, esq., his attorney, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a petition for a writ of mandamus against the city council of the city of Keokuk, Iowa, defendant, which said petition is in words and figures following, to wit:

Petition.

Circuit court of the United States for the northern district of the State of Illinois.

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thomson, *v.* THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa. } Petition for mandamus.

And now comes the United States of America, at the relation of J. Edgar Thomson, and complaining unto the honorable judge of this court of the parties hereinafter named, states, said J. Edgar Thomson is a citizen of the State of Pennsylvania, residing at Philadelphia, and that the city of Keokuk is a municipal corporation existing under and by virtue of the laws of the State of Iowa, and is a citizen of the State of Iowa, within the meaning and intent of the statutes of the United States.

3 Relator further states that on or about the 1st day of March, 1856, said city of Keokuk, Iowa, under and in pursuance of

her ordinance providing for her subscription to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Company, passed 5 February, 1856, under authority of an act of the legislature of the State of Iowa, approved January 22, 1853, executed by the hands of her mayor and city clerk, and under the seal of said city, her certain one hundred corporate bonds, for the sum of one thousand dollars each, payable twenty years after date, with eight per cent. interest, payable semi-annually, according to the tenor of coupons attached to each, all of which coupons were made payable to bearer, and the bonds made payable to the said railroad company or bearer, and were delivered to said railroad company to enable them to build their road, which terminates within the corporate limits of said city, and for which bonds said city has or is entitled to receive a corresponding amount of stock in said railroad company. Relator states the ordinance and statute aforesaid require the said city, by her proper officers, to levy and collect, in addition to other taxes, an annual
4 tax upon all property subject to taxation in said city, to pay said coupons and bonds as same become due respectively.

Relator states, further, that said bonds were sold in the market to various parties, and that he became the holder and owner of a large number of same, with the coupons attached, in the ordinary course of business, and for a valuable consideration paid before the maturity of same.

Relator states said city having failed to levy and collect an annual tax for the payment of the coupons maturing on said bonds, and some remaining unpaid, and there being no funds provided by said city for the payment of said coupons, he, the relator, afterwards brought suit against the said city of Keokuk, and the Keokuk, Mount Pleasant, and Muscatine Railroad Company, upon 108 of said coupons of $40 each, in the circuit court of the United States for the district of Iowa, but that the said suit was transferred pendente lite from said court to this court, being the next nearest district, by order and upon the motion of the judges of the said circuit court for the district of Iowa, on account of the direct personal pecuniary interest which each of said judges had in the matters in controversy therein, to which
5 order and change of venue each party to said order consented, whereby this court acquired jurisdiction of said cause. And on the 19th October, 1864, at the October term of this court, relator recovered judgment therein against said city for the sum of five thousand four hundred twenty-seven $\frac{50}{100}$ damages, with eight per cent. interest, and $87 35 costs of suit, which still remains in full force and unappealed.

Relator further states that on the 21st November, 1864, he, by his attorney, made personal demand upon the city council of said city, while in session in their council chamber in said city, that they should immediately levy and cause to be collected the taxes specified in said ordinance and laws, to pay off the said judgment, interest and costs.

Relator states that he, by his attorney, was present and heard the remarks and decisions of said city council of said city, respecting

said demand, and what they would do in relation to it, and he states after considerable deliberation they failed and declined to comply with said demand, claiming they were enjoined by order of the supreme court of Iowa from so doing, and that they proposed
6 to contest the right and power of this court to require them to levy and collect said railroad tax in any action which be brought by relator for that purpose against them, and relator states altho' said city council have had several meetings since said demand as aforesaid was made upon them, but that they have still failed, neglected, and refused to levy and collect the tax aforesaid.

Relator states said city council of said city are the legal representatives of said city, and the parties by whose order and action all corporation taxes are to be levied and collected, and other municipal duties are to be performed.

Relator states said city has no property or revenue which can be reached on execution, and that he is remediless and impotent to collect his judgment aforesaid, except through the exercise of the power of this court to award him a writ of mandamus to compel the levy and collection of said tax for the purpose aforesaid.

Relator therefore prays that your honors, the judges of this court, to award him a writ of mandamus to be issued by this court, under the seal thereof, directed to and commanding the city
7 council of the city of Keokuk, Iowa, at their next meeting, to levy a sufficient tax upon all the property subject to taxation within the corporate limits of said city, to pay said judgment of relator had and obtained in this court, with 8 per cent. interest and costs, and costs of this proceeding, and to collect same forthwith, and pay same over to relator, or his attorney, H. Scott Howell, and of said writ to make due return, with their doings thereon, into this court on the first day of the next March term of this court, to be held on the first Monday of March, 1865.

All of which relator claims as of right, and for which he will ever pray, &c.

United States of America at the relation of J. Edgar Thompson—
H. SCOTT HOWELL, *Att'y for Relator.*

STATE OF ILLINOIS, *Cook county, ss:*

I, H. Scott Howell, of lawful age, being first duly sworn, state I am attorney for J. Edgar Thompson, relator in above and fore-
8 going petition; that I have personal knowledge of the chief matters stated therein, and that the allegations of said petition are true, as I verily believe.

H. SCOTT HOWELL.

Sworn to and subscribed before me this 14th January, 1865.
WM. H. BRADLEY, *Cl'k.*

KEOKUK, *Iowa, Nov.* 21, 1864.

To the mayor and aldermen of the city of Keokuk, Iowa:

Whereas J. Edgar Thompson, at the October term, 1864, of the United States circuit court for the northern district of Illinois, recovered a judgment against the city of Keokuk, Iowa, for $5,427 50, and interest and costs upon coupons cut from certain eight per cent. railroad bonds issued by said city of Keokuk, under her ordinance providing for her subscription to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Co., under authority of an act of the legislature of Iowa, approved January 22, 1853, and for the payment of which you have failed to make any provision as required by law:

9 Now, therefore, this is to notify and demand of you that you do immediately levy and cause to be collected the taxes specified in the said laws, to pay off said judgment, or in default thereof said plaintiff will make application to the courts for a mandamus to require said acts at your hands.

J. EDGAR THOMPSON, *Pl'ff*,
By H. SCOTT HOWELL, *his Att'y.*

STATE OF IOWA, *County of Lee:*

I, H. Scott Howell, of lawful age, being first duly sworn, state that I served the within notice by reading same personally to mayor and aldermen of the city of Keokuk, while in session at Keokuk, on November 21st, 1864, and by giving to the clerk of said city council at same time a true copy of same.

H. SCOTT HOWELL.

Sworn to and subscribed before me this 23d day of November, A. D. 1864, as witness my hand and seal notarial.

[SEAL.] ANDREW LE FEVRE,
Notary N. P. Lee Co., Iowa.

10 Indorsed: Filed Jan'y 14th, 1865.
WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 14th day of January, A. D. 1865, in the December term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Order of court.

UNITED STATES OF AMERICA, *ex rel.* of J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.
} Petition for mandamus.

Upon the petition in the above-entitled cause being this day presented by counsel for relator in open court, it is ordered that an alternative writ of mandamus issue thereon as prayed for, (embracing a copy of said petition,) under the seal of this court, directed to the

city council of the city of Keokuk, Iowa, requiring them to do and perform the acts prayed for in said petition, or to show cause, if any they can, why the relief prayed for by relator should not be granted and said acts and deeds named therein should not be done and performed at the hands of said defendants; that said writ be
11 made returnable on the first day, being the first Monday, of our next March term of this court, for further hearing and order herein.

On this day, to wit, the nineteenth day of January, A. D. 1865, an alternative writ of mandamus issued out of said clerk's office in said entitled cause; which said writ, together with the return of the marshal thereon, is in words and figures following, to wit:

Alt. writ.

THE UNITED STATES OF AMERICA, *Northern district of Illinois:*

The United States of America to the city council of the city of Keokuk, Iowa, greeting:

Whereas the United States of America, at the relation of J. Edgar Thomson, filed in the circuit court of the United States for the northern district of Illinois, on the fourteenth day of January, A. D. eighteen hundred and sixty-five, a petition for a writ of mandamus against the city council of the city of Keokuk, Iowa, which is in the words and figures following, to wit:

12 *Petition for mandamus.*

Circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERIRA, *ex rel.* J. Edgar Thomson,
v.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

And now comes the United States of America, at the relation of J. Edgar Thompson, and complaining unto the honorable judges of this court of the parties hereinafter named, states said J. Edgar Thomson is a citizen of the State of Pennsylvania, residing at Philadelphia, and that the city of Keokuk is a municipal corporation existing under and by virtue of the laws of the State of Iowa, and is a citizen of the State of Iowa within the meaning and intent of the statutes of the United States.

Relator further states that on or about the 1st day of March, 1856, said city of Keokuk, Iowa, under and in pursuance of her ordinance providing for her subscription to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Company, passed 5 February, 1856, under authority of an act of the legislature of the State of Iowa, affirmed January 22, 1853, executed by the hands of her mayor and city clerk, and under the seal of said city, her certain one hundred corporate bonds for the sum of one thousand dollars each,

13 payable twenty years after date, with eight per cent. interest, payable semi-annually, according to the terms of coupons attached to each, all of which coupons were made payable to bearer and the bonds made payable to the said railroad company, or bearer, and were delivered to said railroad company to enable them to build their road, which terminates within the corporate limits of said city, and for which bonds said city has or is entitled to receive a corresponding amount of stock in said railroad company.

Relator states the ordinances and statutes aforesaid require the said city, by her proper officers, to levy and collect, in addition to other taxes, an annual tax upon all property subject to taxation in said city, to pay said coupons and bonds as same became due respectively.

Relator states further that said bonds were sold in the market to various parties, and that he became the holder and owner of a large number of the same, with the coupons attached, in the ordinary course of business, and for a valuable consideration paid before the maturity of same.

14 Relator states said city having failed to levy and collect an annual tax for the payment of the coupons maturing on said bonds, and same remaining unpaid, and there being no funds provided by said city for the payment of said coupons, he, the relator, afterwards brought suit against said city of Keokuk and the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, upon 108 of said coupons of $40 each, in the circuit court of the United States for the district of Iowa, but that the said suit was transferred pendente lite from said court to this court, being the next nearest district, by order and upon the motion of the judges of said circuit court for the district of Iowa, on account of the direct personal pecuniary interest which each of said judges had in the matters in controversy therein, to which order and change of vendue each party to said action consented, whereby this court acquired jurisdiction of said cause, and on the 19th October, 1864, at the October term of this court, relator recovered judgment therein against said city for the sum of five thousand four hundred twenty-seven and $\frac{50}{100}$ dollars damages, with 8 per cent. interest, and $87 35 costs of suit, which still remains in full power and unappealed.

15 Relator further states that on the 21st November, 1864, he, by his attorney, made a personal demand upon the city council of said city, while in session in their council chamber in said city, that they should immediately levy and cause to be collected the taxes specified in said ordinance and laws to pay off the said judgment, interest and costs.

Relator states he, by his attorney, was present and heard the remarks and discussion of said city council of said city respecting said demand, and what they would do in relation to it, and he states, after considerable deliberation, they failed and declined to comply with said demand, claiming they were enjoined by order of the supreme court of Iowa from so doing, and that they proposed to contest the right and power of this court to require them to levy and collect said

city council of the city of Keokuk, Iowa, requiring them to do and perform the acts prayed for in said petition, or to show cause, if any they can, why the relief prayed for by relator should not be granted and said acts and deeds named therein should not be done and performed at the hands of said defendants; that said writ be
11 made returnable on the first day, being the first Monday, of our next March term of this court, for further hearing and order herein.

On this day, to wit, the nineteenth day of January, A. D. 1865, an alternative writ of mandamus issued out of said clerk's office in said entitled cause; which said writ, together with the return of the marshal thereon, is in words and figures following, to wit:

Alt. writ.

THE UNITED STATES OF AMERICA, *Northern district of Illinois:*

The United States of America to the city council of the city of Keokuk, Iowa, greeting:

Whereas the United States of America, at the relation of J. Edgar Thomson, filed in the circuit court of the United States for the northern district of Illinois, on the fourteenth day of January, A. D. eighteen hundred and sixty-five, a petition for a writ of mandamus against the city council of the city of Keokuk, Iowa, which is in the words and figures following, to wit:

12 *Petition for mandamus.*

Circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERIRA, *ex rel.* J. Edgar Thomson,
v.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

And now comes the United States of America, at the relation of J. Edgar Thompson, and complaining unto the honorable judges of this court of the parties hereinafter named, states said J. Edgar Thomson is a citizen of the State of Pennsylvania, residing at Philadelphia, and that the city of Keokuk is a municipal corporation existing under and by virtue of the laws of the State of Iowa, and is a citizen of the State of Iowa within the meaning and intent of the statutes of the United States.

Relator further states that on or about the 1st day of March, 1856, said city of Keokuk, Iowa, under and in pursuance of her ordinance providing for her subscription to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Company, passed 5 February, 1856, under authority of an act of the legislature of the State of Iowa, affirmed January 22, 1853, executed by the hands of her mayor and city clerk, and under the seal of said city, her certain one hundred corporate bonds for the sum of one thousand dollars each,

13 payable twenty years after date, with eight per cent. interest, payable semi-annually, according to the terms of coupons attached to each, all of which coupons were made payable to bearer and the bonds made payable to the said railroad company, or bearer, and were delivered to said railroad company to enable them to build their road, which terminates within the corporate limits of said city, and for which bonds said city has or is entitled to receive a corresponding amount of stock in said railroad company.

Relator states the ordinances and statutes aforesaid require the said city, by her proper officers, to levy and collect, in addition to other taxes, an annual tax upon all property subject to taxation in said city, to pay said coupons and bonds as same became due respectively.

Relator states further that said bonds were sold in the market to various parties, and that he became the holder and owner of a large number of the same, with the coupons attached, in the ordinary course of business, and for a valuable consideration paid before the maturity of same.

14 Relator states said city having failed to levy and collect an annual tax for the payment of the coupons maturing on said bonds, and same remaining unpaid, and there being no funds provided by said city for the payment of said coupons, he, the relator, afterwards brought suit against said city of Keokuk and the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, upon 108 of said coupons of $40 each, in the circuit court of the United States for the district of Iowa, but that the said suit was transferred pendente lite from said court to this court, being the next nearest district, by order and upon the motion of the judges of said circuit court for the district of Iowa, on account of the direct personal pecuniary interest which each of said judges had in the matters in controversy therein, to which order and change of vendue each party to said action consented, whereby this court acquired jurisdiction of said cause, and on the 19th October, 1864, at the October term of this court, relator recovered judgment therein against said city for the sum of five thousand four hundred twenty-seven and $\frac{50}{100}$ dollars damages, with 8 per cent. interest, and $87 35 costs of suit, which still remains in full power and unappealed.

15 Relator further states that on the 21st November, 1864, he, by his attorney, made a personal demand upon the city council of said city, while in session in their council chamber in said city, that they should immediately levy and cause to be collected the taxes specified in said ordinance and laws to pay off the said judgment, interest and costs.

Relator states he, by his attorney, was present and heard the remarks and discussion of said city council of said city respecting said demand, and what they would do in relation to it, and he states, after considerable deliberation, they failed and declined to comply with said demand, claiming they were enjoined by order of the supreme court of Iowa from so doing, and that they proposed to contest the right and power of this court to require them to levy and collect said

railroad tax in any action which be brought by relator for that purpose against them, and relator states altho. said city council have had several meetings since said demand as aforesaid was made upon them, but that they have still failed, neglected, and refused to levy and collect the tax aforesaid.

Relator states said city council of said city are the legal representatives of said city, and the parties by whose order and action all corporation taxes are to be levied and collected and other municipal duties are to be performed.

16 Relator states said city has no property or revenue which can be reached on execution, and that he is remediless and impotent to collect his judgment aforesaid except through the exercise of the powers of this court to award him a writ of mandamus to compel the levy and collection of said tax for the purpose aforesaid.

Relator therefore prays that your honors, the judges of this court, to award him a writ of mandamus to be issued by this court, under the seal thereof, directed to and commanding the city council of the city of Keokuk, Iowa, at their next meeting, to levy a sufficient tax upon all the property subject to taxation within the corporate limits of said city, to pay said judgment of relator had and obtained in this court, with 8 per cent. interest and costs, and costs of this proceeding, and to collect same forthwith, and pay same over to relator or his attorney, H. Scott Howell, and of said writ to make due return, with their doings thereon, into this court on the first day of the next March term of this court to be held on the first Monday of March, 1865; all of which relator claims as of right and for which he will ever pray, &c.

17 United States of America at the relation of J. Edgar Thompson—

H. SCOTT HOWELL, *Att'y for Relator.*

STATE OF ILLINOIS, *Cook county, ss:*

I, H. Scott Howell, of lawful age, being first duly sworn, state that I am attorney for J. Edgar Thompson, relator in above and foregoing petition; that I have personal knowledge of the chief matters stated therein, and that the allegations of said petition are true, as I verily believe.

H. SCOTT HOWELL.

Sworn to and subscribed before me this 14th January, 1865.

WM. H. BRADLEY, *Cl'k.*

KEOKUK, IOWA, *Nov.* 21, 1864.

To the mayor and aldermen of the city of Keokuk, Iowa:

Whereas J. Edgar Thompson, at the October term, 1864, of the United States circuit court for the northern district of Illinois, recovered a judgment against the city of Keokuk, Iowa, for $5,437 50, and interest and costs upon coupons, cut from certain eight per cent. railroad bonds, issued by said city of Keokuk, under her ordinance providing for her subscription to the capital stock of the Keo-

kuk, Mount Pleasant, and Muscatine Railroad Co., under authority of an act of legislature of Iowa, approved January 22, 1853, and for the payment of which you have failed to make any provision, as required by law: Now, therefore, this is to notify and demand of you that you immediately levy and cause to be collected the taxes specified in the said laws to pay off said judgment, as in default thereof said plaintiff will make application to the courts for a mandamus to require said acts at your hands.

J. EDGAR THOMPSON, *Pl'ff*,
By H. SCOTT HOWELL, *his Att'y.*

STATE OF IOWA, *County of Lee:*

I, H. Scott Howell, of lawful age, being first duly sworn, state that I served the within notice by reading same personally to mayor and aldermen of the city of Keokuk, while in session at Keokuk, on November 21st, 1864, and by giving to the clerk of said city council, at same time, a true copy of same.

H. SCOTT HOWELL.

Sworn and subscribed before me this 23d day November, A. D. 1864, as witness my hand and seal notarial.

19 [SEAL.] ANDREW LE FEVRE,
Notary N. P. Lee County, Iowa.

[5-ct. rev. stamp, cancelled.]

Indorsed: Filed Jan'y 14th, 1865.

WM. H. BRADLEY, *Cl'k.*

Petition for mandamus.

And therefore, on the same day, to wit, January 14, A. D. 1865, the following order was made in said court in said entitled cause, to wit:

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

Upon the petition in the above-entitled cause being this day presented by counsel for relator in open court, it is ordered that an alternative writ of mandamus issue thereon as prayed for, (embracing a copy of said petition,) under the seal of this court, directed to the city council of the city of Keokuk, Iowa, requiring them to do and perform the acts prayed for in said petition, or to show cause, if any they can, why they should not be done, and the relief prayed for
20 by relator should not be granted, and said acts and deeds named therein should not be done and performed at the hands of said defendants; that said writ be served upon the mayor of said city and made returnable on the first day, being the first Monday of

our next March term of this court, for further hearing and order therein.

Now, therefore, these presents are to command you, the city council of the city of Keokuk, Iowa, that you, at your next meeting, do and perform all the acts and things prayed for in said petition, so far as same can be done, or to show cause why same should not be done, and the relief prayed for by said relator in his petition should not be granted and enforced. And of this writ, and in what manner this our command shall be executed by you, you are required to make due return unto the justices of this court, on the first day of the next term thereof, being the first Monday of March, A. D. 1865, and hereof fail not, at your peril.

To the marshal of the district of Iowa to execute according to law.

21 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Chicago, in the district aforesaid, this nineteenth day of January, A. D. 1865, and of our independence the 89th.

[SEAL.] WM. H. BRADLEY, *Cl'k.*

[50-ct. rev. stamp.]

Marshal's return.

Rec'd a writ, of which this is a true copy, Jan. 30, '65, which I served by reading the same to H. B. Ten Eyck, president of the city council of the city of Keokuk, Lee county, Iowa. I also left with him the original writ, of which this is a true copy, on the 17th of Feb'y, 1865, in the city of Keokuk, Lee county, Iowa.

H. M. HOXIE, *U. S. M.*,
By H. FULTON, *Dep't.*

Indorsed: Filed March 7th, 1865.

WM. H. BRADLEY, *Cl'k.*

Motion to quash.

On this day, to wit, the eleventh day of April, A. D. 1865, came said defendant, by its attorneys, and filed in the office of the clerk of said court its motion to quash return of writ; which said motion is in the words and figures following, to wit:

United States circuit court for the northern district of Illinois.

22 THE UNITED STATES OF AMERICA, *ex relatione* J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK.

Now comes def't, city council of city of Keokuk, Iowa, by A. W. Arrington and H. Strong, its atty's, and making a special appearance for the purpose of this motion, move the court to quash the service and return of service of the alternative writ of mandamus; because, 1, the service, as shown by the return, was made upon H. B. Ten Eyck as president of the city council of city of Keokuk, when, by law and the charter of the said city, the mayor is the proper officer upon

whom service should have been made, there being no averment in the petition that the mayor was absent, and the writ was not served on all of the members of the city council, or served as required by law; 2d, the return does not state where said writ was served, or in what district or by what officer; whether the person serving it was at the time marshal of this or any other judicial district.

A. W. ARRINGTON, and
H. STRONG, *Att'ys for Def'ts.*

Indorsed: Filed April 11, 1865.
23 WM. H. BRADLEY, *Cl'k.*

Affidavit.

On this day, to wit, the 11th day of April, A. D. 1865, said relator, by his attorney, filed in said clerk's office an affidavit in said entitled cause, which said affidavit is in words and figures following, to wit:

STATE OF ILLINOIS, *Cook co., ss:*

I, H. Scott Howell, of lawful age, state I am a citizen of and have been residing in the city of Keokuk, Iowa, for more than one year next preceding this date. That J. M. Hiatt has been mayor of said city for the year preceding 1st Monday of April, 1865, and that from about the first of January, A. D. 1865, to 30 of March, 1865, when affiant left his home, said J. M. Hiatt, mayor, was not in the city of Keokuk or State of Iowa, but was on east "office seeking" from the President; and affiant further states H. B. Ten Eyck, during said period, was president of the city council, and acting as mayor of said city; and further affiant says not.

H. SCOTT HOWELL.

Sworn to and subscribed before me on this 11 April, 1865.
E. A. DRUMMOND, *U. S. Com'r.*

Indorsed: Filed April 11, 1865.
24 WM. H. BRADLEY, *Cl'k.*

Petition for mandamus.

On this day, to wit, the 12th day of April, in the adjourned March term, A. D. 1865, of the said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

Now come the defendants, by A. W. Arrington and H. Strong, their attorneys, for the purpose of this motion, and move the court to quash the service and return of service of the alternative writ of mandamus issued herein, and the court, after hearing the arguments of counsel and not being sufficiently advised in the premises, takes time to consider.

On this day, to wit, the 13th day of April, in said March term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

25 *Order of court—petition for mandamus.*

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

The court having considered, and being now fully advised upon the motion of the defendant to quash the return to the alternative writ of mandamus heretofore submitted, and being of opinion that the notice to the defendants was insufficient sustain the motion and quash the return on the writ. And now, on motion of the relator, by H. Scott Howell, leave is given him to amend his information.

Amended information.

On this day, to wit, the 15th day of May, A. D. 1865, came said relator, by his attorney, and filed in said clerk's office his amended information in said entitled cause, which said amended information is in the words and figures following, to wit:

United States circuit court, northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thomson
vs.
26 THE CITY COUNCIL OF THE CITY OF Keokuk, in the State of Iowa.

And now come the United States of America, at the relation of J. Edgar Thomson, and by leave of the court first had and obtained, exhibit this amended petition for mandamus upon the city council of the city of Keokuk, in the State of Iowa.

And the relator states that he is a citizen of the State of Pennsylvania, and that said city is a citizen of the State of Iowa and a municipal corporation existing under and by virtue of the act of the legislature of the State of Iowa, entitled "An act to incorporate the city of Keokuk," approved December 13th, 1848, and various acts amendatory thereof.

Relator states that on the 19th day of October, A. D. 1864, at the October term of this court, relator recovered judgment in this court against said city for the sum of five thousand four hundred and twenty-seven dollars and fifty cents ($5,427 50) damages, with eight per centum interest, and eighty-seven dollars and thirty-five cents ($87 35) costs, which judgment still remains in full force and wholly unpaid. Said judgment was recovered in a cause then pending
27 in this court wherein relator was plaintiff and said city and the Keokuk, Mount Pleasant, and Muscatine Railroad Company were defendants; said cause was commenced in the circuit court of

the United States for the district of Iowa, and transferred therefrom pendente lite to this court, all parties consenting, by order and upon the motion of the judges of the circuit court of the United States for the district of Iowa, on account of the pecuniary interest which each of said judges had in the matters in controversy therein, and thereby this court acquired jurisdiction of said cause before the rendition of said judgment.

Relator states that said judgment was recovered upon 108 coupons or interest notes of said city, bearing date March 1st, 1856, payable to bearer, given for the payment of certain instalments of interest upon the certain bonds of said city of the same date for the sum of one thousand dollars ($1,000) each, payable to the Keokuk, Mount Pleasant, and Muscatine Railroad Company, or bearer, twenty (20) years after said date, with interest, payable semi-annually, which coupons and the bonds to which they had been attached were at the date of said judgment the property of relator.

28 And relator states that said coupon bonds are part of a series of one hundred bonds of the same date and amount, and in like manner payable, executed by the said city by the hands of her mayor and city clerk, and delivered to said company (to enable it to build its railroad) for a corresponding amount of stock in said railroad company.

And relator states that said one hundred bonds were executed and delivered by said city as aforesaid, under and in pursuance of an ordinance of said city council of the city of Keokuk, passed February 5th, A. D. 1856, entitled "An ordinance providing for the subscription to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company," and in force when said bonds were executed, which ordinance is as follows:

"Whereas by virtue of and in pursuance of an act of the general assembly of the State of Iowa amending the charter of the city of Keokuk, approved January 22, A. D. 1853, providing that the question of contracting indebtedness by the city council in certain cases shall be first submitted to the people of said city, and whereas due notice was given for an election on the 7th day of December,

29 A. D. 1855, at the usual place of holding elections in the city of Keokuk, submitting the question on the said mentioned day as to whether the said city should subscribe one hundred thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, payable in the bonds of the city of Keokuk, bearing interest at the rate of eight per cent. per annum interest, payable semi-annually in the city of New York; and whereas said election was held agreeably to said notice and in accordance with the law; and whereas there was at said election a majority of the votes in favor of such subscription: Now, therefore, be it ordained by the city council of the city of Keokuk—

"SECTION 1. That the mayor of said city is hereby empowereda authorized, and directed to subscribe the sum of one hundred thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, in behalf and in the name of said city,

by which act of the chief executive officer the faith of said city shall be irrevocably pledged to said company and their assigns in the sum of one hundred thousand dollars.

"SEC. 2. That in order to provide for the payment of the stock so subscribed, the mayor and recorder for the time being shall
30 execute the bonds of said city, amounting in the aggregate to the sum of one hundred thousand dollars, to be signed by the mayor, and countersigned by the city recorder, with the corporate seal of the city affixed, and bearing date the first day of March, A. D. 1856, and being payable twenty years after date thereof, to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, or bearer, in the sum of one thousand dollars each, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, with interest coupons thereto attached, signed by the mayor, and bearing even date with said bonds, and the principal and interest on said bonds being made payable at the Continental Bank, in the city of New York. The title of said bonds shall be the city of Keokuk eight per cent. railroad bonds, and numbered consecutively from number one to one hundred, inclusive."

"SEC. 3. That the mayor shall issue and deliver to the said railroad company so many of said bonds when executed as is provided in the preceding section, as at their par value may be sufficient for the payment of the whole of said subscription, at such times as said company may require, whether assessments have been made
31 upon other stockholders to the full amount of their respective subscriptions or not."

"SEC. 4. For the redemption of said bonds at their maturity, and the payment of the interest to accrue thereon, the said city of Keokuk pledges irrevocably, first, its faith and credit; second, the stock in the Keokuk, Mt. Pleasant, and Muscatine Railroad Company subscribed for by the said city, and the profits, accumulations, and dividends on said stock; third, the taxes levied and to be levied and collected on all property, real and personal, subject to and to become subject to taxation within said city of Keokuk. And the said city of Keokuk further agrees and stipulates with the said railroad company, and whoever may become the holder or holders of said bonds, or any of them, that the said bonds and the interest coupons annexed, when due, shall be received in payment for taxes, and all other dues to the city, and further, that the holder or holders of said bonds, or any of them, may, at any time within ten years from the date thereof, exchange the principal of said bonds, or any of them, for stock in the said railroad company at par, and the said city of Keokuk is irrevocably bound to transfer to the holder thereof, or his, her, or
32 their agent or attorney, within the time specified, for an amount equal at its par value to the principal which may be due thereon at the time of such demand, upon the surrender of said bonds, or any of them, and the unpaid coupons to said city. And, further, that the stock subscribed aforesaid to said railroad company shall be sacredly set apart and preserved for the redemption of the principal of said bonds, and shall not be used otherwise for any purpose, while any of

said bonds are outstanding, and the dividends of said stock shall be set apart for the payment of the interest on said bonds. And the city of Keokuk further agrees and stipulates that said bonds, with all the rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand payable to bearer."

"SEC. 5. Be it further ordained that at all elections of directors for said Keokuk, Mt. Pleasant, and Muscatine Railroad Company, or other elections in which the stockholders of said company, by the rules and regulations thereof, are authorized and entitled to vote, such vote or votes as the said city of Keokuk may be entitled to cast by virtue of her said subscription of one hundred thousand dollars shall
33 be thrown on behalf of said city by the mayor for the time being, or such other person or persons as the city council of said city may designate for such purpose, or by such proxy or proxies as may by him or them so designated by the city council be appointed in accordance with the by-laws of said company; said stock of said city to be represented by her delegated authority in the same manner, and to the same extent, subject also to the same restrictions as other stock owned and represented by individuals in said company." As in and by said ordinance, or the record thereof on file in the proper office, among the other records and ordinances of said city, will on reference more fully appear.

Relator states that by the 9th section of an act of the general assembly of the State of Iowa, entitled "An act to amend the charter of the city of Keokuk," passed July 25th, A. D. 1856, after reciting that 'at elections held at various times it was determined by the legal voters of the city of Keokuk that the city council should subscribe certain sums in the stock of the Keokuk, Fort Des Moines, and Minnesota Railroad Company, and in the Mississippi and Wabash Railroad Company, and in the Keokuk, Mt.
34 Pleasant, and Muscatine Railroad Company;" and that in some instances the bonds of the city had "been issued to pay for the subscription to said stock, and in others they had not been issued," and that "doubts exist as to the authority of the council to issue said bonds, and to provide by taxation for the payment of the principal and interest of said bonds," it was enacted "that the votes of the people of said city as aforesaid, and the acts of the said city council in accordance therewith, are hereby legalized and made firm, valid, and effectual to all intents and purposes, and that the city council of said city is hereby authorized, empowered, and directed to levy and collect such taxes as may be necessary to pay the principal and interest of said bonds which have been so issued, or of any which may hereafter issue in accordance with any of said notes; and that so much of any act as requires an annual vote to provide for levying the tax to pay the interest on any bonds of said city is hereby repealed. The taxes aforesaid shall be levied and collected in the same manner that the other annual taxes of the city are levied and collected."

35 Relator states that said general assembly provided, further, for the payment of the interest on said bonds, by the 7th section of chapter 238, laws 1857, approved January 27th, 1857, in and by which it was among other things enacted that "the city government are hereby authorized to levy such taxes as it or they may deem necessary to pay the interest upon the debt of said city and support and carry on its municipal affairs, and all laws contrary to this provision are hereby repealed."

Relator states that said city of Keokuk is situated in the county of Lee, in the State of Iowa, and that by a certain act of said general assembly, which became a law January 29th, 1857, entitled "an act legalizing the issue of county, city, and town corporation bonds in the counties of Lee and Davis;" it was among other things enacted in words following, that all votes heretofore taken in the counties of Lee and Davis, and in any city or town in Lee and Davis counties, in the form of a joint or several proposition, whether said counties, city, or town will aid in the construction of one or more railroads, specifying the amount to be given to each as a joint or several pro-
36 position, and the subscriptions made by said county, city, or town, and the bonds of said counties, city, or towns issued in pursuance of said votes and subscription, or hereafter to be issued, are hereby declared to be legal and valid, and that all such bonds issued and hereafter to be issued in pursuance of such votes and subscription, shall be a valid lien upon the taxable property of said county, city, or town." "Sec. 2. That the county judge, city council, or other proper authority of said county, city, or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds, and said counties, city, or town shall not be allowed to plead, in any suit brought to recover the principal or interest of such bonds, that the same are usurious, irregular, or invalid in consequence of the informalities cured by this act." "Sec. 3. That all bonds heretofore issued by Lee and Davis counties, and by any city or town in Lee and Davis counties, for subscription to railroads in pursuance of any vote by the people of said county, city or town heretofore had, shall be valid and of full legal and binding force and effect,
37 notwithstanding any informality or irregularity in the submission of the question to the vote of the people, or in taking of the vote authorizing the subscription to such railroads and the issuing of such bonds."

And relator insists that by reason of the premises said judgment is a valid lien upon the taxable property in said city of Keokuk, and that the city council should be required to levy and collect a tax upon said property, in the same manner that the other annual taxes of the city are levied and collected, and to apply the proceeds in payment of said judgment. Relator further states that on the 21st of November, 1864, he, by his attorney, made a personal demand upon the city council of said city, then in session in the city council chamber in said city, that they should immediately levy and cause to be collected the said taxes which were necessary to pay off said judgment, interest and costs that after considerable deliberation and discussion re-

specting said demand, failed and declined to comply with said demand, alleging that they were enjoined by order of the
38 supreme court of Iowa from so doing, and that they proposed to contest the right and power of this court to require them to levy and collect said railroad tax in any action which would be brought by relator for that purpose against them, and relator states that the said council have had several meetings since said demand, but have altogether failed, neglected, and refused to levy and collect the tax aforesaid. And relator states that the annual interest on the bonds of said city amounts to about $81,000, and that said city council has not levied a tax to pay any part of said interest since the year 1858, and that said city has no property or revenue which can be reached on execution, and that relator cannot collect his said judgment unless this court award him a writ of mandamus to compel the levy and collection of said tax for the purpose aforesaid.

Relator therefore prays (as he has heretofore prayed) your honors to award him a writ of mandamus, to be issued out of this court under the seal thereof, directed to and commanding the city council of the city of Keokuk, Iowa, at their next meeting, to levy a sufficient tax upon all the property subject to taxation within the cor-
39 porate limits of said city to pay said judgment of relator had and obtained in this court, with 8 per cent. interest, and costs, and to collect the same forthwith, and to pay the same over to relator, or to his attorney, H. Scott Howell, and of said writ to make due return with their doings thereon unto this court, on the first day of the next July term of this court, to be held on the 1st Monday in July, A. D. 1865, all of which relator claims, &c., for which he will ever pray, &c.

J. EDGAR THOMSON, *Relator*,
By WOODBRIDGE and
GRANT and
H. SCOTT HOWELL, *his Att'ys.*

UNITED STATES OF AMERICA, *State of Iowa, Lee county, ss:*

Personally appeared before me, clerk of the district court of the United States for the district of Iowa, H. Scott Howell, of lawful age, who, being by me first duly sworn, states he is personally acquainted with the chief facts stated in the above petition, and that all the allegations therein contained are true, as he verily believes, and that he is one of the attorneys for relator.

H. SCOTT HOWELL.

Sworn to and subscribed before me on this 4th May, 1865,
40 as witness my hand and the seal of said court.

[SEAL.] JOHN C. BURNS, *Clerk*,
By ERIE J. LEECH, *Deputy*.

[5-ct. U. S. rev. stamp, cancell'd.]

Indorsed: Filed May 15th, 1865.

WM. H. BRADLEY, *Clerk*.

REC. 360—2 *

On this day, to wit, the 15th day of May, in the adjourned May term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, IOWA. } Petition for mandamus.

On information, and amended information under oath, having been filed in this court by the United States of America, at the relation of J. Edgar Thompson against the said city council of the city of Keokuk, Iowa, now comes the said relator, by his attorney, and on his motion it is ordered by the court that an alternative writ of mandamus issue under the seal of this court, as prayed for in said information, and amended information, returnable on the first Monday of July next.

On this day, to wit, the 19th day of May, A. D. 1865, an alternative writ of mandamus issued out of said clerk's office against said defendant in said entitled cause, which said writ, together with the return of the marshal thereon, is in words and figures following, to wit:

41 *Alt. writ of mandamus.*

Circuit court United States, northern district of Illinois.

The United States of America, to the city council of the city of Keokuk, in the State of Iowa, greeting:

Whereas the United States of America, at the relation of one J. Edgar Thompson, has filed in the circuit court of the United States for the northern district of Illinois an information and amended information representing the facts, and containing a prayer for a writ of mandamus, as follows, to wit:

And relator states that he is a citizen of the State of Pennsylvania, and that said city is a citizen of the State of Iowa, and a municipal corporation existing under and by virtue of the act of the legislature of the State of Iowa, entitled "An act to incorporate the city
42 of Keokuk," approved December 13th, 1848, and various acts amendatory thereof. Relator states that on the 19th day of October, A. D. 1864, at the October term of this court, relator recovered judgment in this court against said city for the sum of five thousand four hundred and twenty-seven dollars and fifty cents ($5,427 50) damages, with eight per centum interest, and eighty-seven dollars and thirty-five cents ($87 35) costs, which judgment still remains in full force, and wholly unpaid. Said judgment was recovered in a cause then pending in this court, wherein relator was plaintiff and said city and the Keokuk, Mount Pleasant, and Muscatine Railroad Company were defendants. Said cause was commenced in the circuit court of the United States for the district of Iowa, and transferred therefrom pendente lite to this court, all parties consenting, by order and upon the motion of the judges of the circuit court of the United States for the district of Iowa, on account of the pecuniary interest which each of said judges had in the matter in controversy

therein, and thereby this court acquired jurisdiction of said cause before the rendition of said judgment.

Relator states that said judgment was recovered upon 108
43 coupons or interest notes of said city, bearing date March 1st, 1856, payable to bearer, given for the payment of certain instalments of interest upon the certain bonds of said city, of the same date, for the sum of one thousand dollars ($1.000) each, payable to the Keokuk, Mount Pleasant, and Muscatine Railroad Company, or bearer, twenty (20) years after said date, with interest payment semi-annually, which coupons and the bonds to which they had been attached were at the date of said judgment the property of relator.

And relator states that said coupon bonds are part of a series of one hundred bonds of the same date and amount, and in like manner payable, executed by the said city by the hands of her mayor and city clerk, and delivered to said company (to enable it to build its railroad) for a corresponding amount of stock in said railroad company.

And relator states that said one hundred bonds were executed and delivered by said city as aforesaid, under and in pursuance of an ordinance of said city council of the city of Keokuk, passed February 5th, A. D. 1856, entitled "An ordinance providing for the subscription to the capital stock of the Keokuk, M't Pleasant, and Muscatine Railroad Company, and in force when said bonds were exe-
44 cuted, which ordinance is as follows:

"Whereas, by virtue of and in pursuance of an act of the general assembly of the State of Iowa, amending the charter of the city of Keokuk, approved January 22d, A. D. 1853, providing that the question of contracting indebtedness by the city council in certain cases shall be first submitted to the people of said city, and whereas due notice was given for an election on the 7th day of December, A. D. 1855, at the usual place of holding elections in the city of Keokuk, submitting the question on the said mentioned day as to whether the said city should subscribe one hundred thousand dollars to the capital stock of the Keokuk, M't Pleasant, and Muscatine Railroad Company, payable in the bonds of the city of Keokuk, bearing interest at the rate of eight per cent. per annum, interest payable semi-annually in the city of New York, and whereas said election was held agreeably to said notice, and in accordance with the law, and whereas there was at said election a majority of the voters in favor of such subscription, now, therefore, be it ordained by the city council of the city of Keokuk:

"SECTION 1. That the mayor of said city is hereby empowered,
45 authorized, and directed to subscribe the sum of one hundred thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, in behalf and in the name of said city, by which act of the chief executive officer the faith of said city shall be irrevocably pledged to said company and their assigns in the sum of one hundred thousand dollars.

"SEC. 2. That in order to provide for the payment of the stock so subscribed the mayor and recorder for the time being shall execute the bonds of said city, amounting in the aggregate to the sum of one

hundred thousand dollars, to be signed by the mayor and countersigned by the city recorder, with the corporate seal of the city affixed, and bearing date the first day of March, A. D. 1856, and being payable twenty years after date thereof to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, or bearer, in the sum of one thousand dollars each, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, with interest coupons thereto attached, signed by the mayor, and bearing even date with said bonds, and the principal and interest on said bonds being made payable at the Continental Bank in the city of New York. The title of
46 said bonds shall be 'city of Keokuk eight per cent. railroad bonds, and numbered consecutively from one to one hundred, inclusive.

"SEC. 3. That the mayor shall issue and deliver to the said railroad company so many of said bonds, when executed, as is provided in the preceding section, as at their par value may be sufficient for the payment of the whole of said subscriptions, at such time as said company may require, whether assessments have been made upon other stockholders to the full amount of their respective subscriptions or not.

"SEC. 4. For the redemption of said bonds at their maturity, and the payment of the interest to accrue thereon, the said city of Keokuk pledges irrevocably, first, its faith and credit; second, the stock in the Keokuk, Mt. Pleasant, and Muscatine Railroad Company subscribed for by the said city, and the profits, accumulations, and dividends on said stock; third, the taxes levied and to be levied and collected on all property, real and personal, subject to, and to become subject to, taxation within said city of Keokuk; and the said city of Keokuk further agrees and stipulates with the said railroad company, and whoever may become the holder or holders of said bonds, or
47 any of them, that the said bonds, and interest coupons annexed, when due, shall be received in payment for taxes and all other dues to the city; and, further, that the holder or holders of said bonds, or any of them, may at any time within ten years from the date thereof, exchange the principal of said bonds, or any of them, for stock in the said railroad company at par, and the said city of Keokuk is irrevocably bound to transfer to the holder thereof, or his or her or their agent or attorney, within the time specified for, an amount equal at its par value to the principal which may be due thereon at the time of such demand, upon the surrender of said bonds, or any of them, and the unpaid coupons to said city; and, further, that the stock subscribed aforesaid to said railroad company shall be sacredly set apart and preserved for the redemption of the principal of said bonds, and shall not be used otherwise for any purpose while any of said bonds are outstanding, and the dividends of said stock shall be set apart for the payment of the interest on said bonds; and the city of Keokuk further agrees and stipulates that the said bonds, with all the rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand payable to bearer.

48 "SEC. 5. Be it further ordained that at all elections of directors for said Keokuk, Mt. Pleasant, and Muscatine Railroad Company, or other elections in which the stockholders of said company, by the rules and regulations thereof, are authorized and entitled to vote, such vote or votes as the said city of Keokuk may be entitled to cast by virtue of her said subscription of one hundred thousand dollars shall be thrown on behalf of said city by the mayor for the time being or such other person or persons as the city council of said city may designate for such purposes or by such proxy or proxies as may by him or them so designated by the city council be appointed in accordance with the by-laws of said company, said stock of said city to be represented by her delegated authority in the same manner and to the same extent, subject also to the same restrictions, as other stock owned and represented by individuals in said company.

As in and by said ordinance, or the record thereof, on file in the proper office among the other records and ordinances of said city, will, on reference, more fully appear. Relator states that by the 9th section of an act of the general assembly of the State of Iowa, entitled "an act to amend the charter of the city of Keokuk," passed July 25th, A. D. 1856, after reciting that "at elections held at various times it was determined by the legal voters of the city of Keokuk that the
49 city council should subscribe certain sums in the stock of the Keokuk, Fort Des Moines, and Minnesota Railroad Company and in the Mississippi and Wabash Railroad Company, and in the Keokuk, Mt. Pleasant, and Muscatine Railroad Company," and that in some instances the bonds of the city had been issued to pay for the subscription to said stock, and in others they had not been issued, and that doubts exist as to the authority of the council to issue said bonds and to provide by taxation for the payment of the principal and interest of said bonds, it was enacted "that the votes of the people of said city as aforesaid, and the acts of the said city council in accordance therewith, are hereby legalized and made firm, valid, and effectual to all intents and purposes, and that the city council of said city is hereby authorized, empowered, and directed to levy and collect such taxes as may be necessary to pay the principal and interest of said bonds which have been so issued, or of any which may hereafter issue in accordance with any of said votes, and that so much of any act as requires an annual vote to provide for levying the tax to pay the interest on any bonds of said city is hereby repealed.
50 The taxes aforesaid shall be levied and collected in the same manner that the other annual taxes of the city are levied and collected."

Relator states that said general assembly provided, further, for the payment of the interest on said bonds by the 7th section of chapter 238, laws 1857, approved January 27th 1857, in and by which it was among other things enacted that "the city government are hereby authorized to levy such taxes as it or they may deem necessary to pay the interest upon the debt of said city, and support and carry on its municipal affairs, and all laws contrary to this provision are hereby repealed." Relator states that said city of Keokuk is situated in the

county of Lee, in the State of Iowa, and that by a certain act of said general assembly, which became a law January 29th, A. D. 1857, entitled "An act legalizing the issue of county, city, and town corporation bonds in the counties of Lee and Davis," it was among other things enacted in words following, that all votes heretofore taken in the counties of Lee and Davis, and in any city or town in Lee and Davis counties, in the form of a joint or several propositions, whether said counties, city, or town will aid in the construction of one or more railroads, specifying the amount to be given to each, as a joint
51 or several proposition, and the subscriptions made by said county, city, or town, and the bonds of said counties, city, or towns issued in pursuance of said votes and subscriptions, or hereafter to be issued, are hereby declared to be legal and valid, and that all such bonds issued and hereafter to be issued in pursuance of such votes and subscriptions shall be a valid lien upon the taxable property of said county, city, or town.

"SEC. 2. That the county judge, city council, or other proper authority of said county, city, or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds, and said counties, city, or town shall not be allowed to plead, in any suit brought to recover the principal or interest of such bonds, that the same are usurious, irregular, or invalid in consequence of the informalities cured by this act.

"SEC. 3. That all bonds heretofore issued by Lee and Davis counties for subscriptions to railroads, in pursuance of any vote by the people of said county, city, or town, heretofore had, shall be valid and of full legal and binding force and effect, notwithstanding any informality or irregularity in the submission of the question to the vote
52 of the people, or in taking of the vote authorizing the subscription to such railroads and the issuing of such bonds."

And relator insists that, by reason of the premises, said judgment is a valid lien upon the taxable property in said city of Keokuk, and that the city council should be required to levy and collect a tax upon said property, in the same manner that the other annual taxes of the city are levied and collected, and to apply the proceeds in payment of said judgment. Relator further states that on the 21st of November, 1864, he, by his attorney, made a personal demand upon the city council of said city, then in session in the city council chamber in said city, that they should immediately levy and cause to be collected the said taxes which were necessary to pay off said judgment, interest and costs; that, after considerable deliberation and discussion respecting said demand, said council failed and declined to comply with said demand, alleging that they were enjoined by order of the supreme court of Iowa from so doing, and that they proposed to contest the right and power of this court to require them to levy and collect said railroad tax in any action which would be brought by relator for that purpose against them, and relator states that
53 the said council have had several meetings since said demand, but have altogether failed, neglected, and refused to levy and collect the tax aforesaid. And relator states that the amount of in-

terest on the bonds of said city amounts to about $81,000, and that said city council has not levied a tax to pay any part of said interest since the year 1858, and that said city has no property or revenue which can be reached on execution, and that relator cannot collect his said judgment, unless this court award him a writ of mandamus to compel the levy and collection of said taxes for the purpose aforesaid. Relator therefore prays (as he has heretofore prayed,) your honors to award him a writ of mandamus, to be issued out of this court, under the seal thereof, directed to and commanding the city council of the city of Keokuk, Iowa, at their next meeting, to levy a sufficient tax upon all the property subject to taxation within the corporate limits of said city, to pay said judgment of relator, had and obtained in this court, with 8 per cent interest, and costs, and to collect the same forthwith, and to pay the same over to relator or to his attorney, H. Scott Howell, and of said
54 writ to make due return, with their doings thereon, unto this court, on the first day of the next July term of this court, to be held on the first Monday of July, A. D. 1865. All of which relator claims, &c., &c., for which he will ever pray, &c.

J. EDGAR THOMSON, *Relator*.
By WOODBRIDGE & GRANT, and
H. SCOTT HOWELL, *his Att'ys*.

Petition for mandamus.

And on the same day, to wit, the 15th day of May, being of the May term of said court, A. D. 1865, in the record of the proceedings in said court in said entitled cause, upon filing said amended information is the following order, to wit:

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

An information and amended information under oath having been filed in this court by the United States of America, at the relation of J. Edgar Thomson, *against* the said city council of the city of Keokuk, Iowa, now comes the said relator, by his attorney, and on his motion it is ordered by the court that an alternative writ of mandamus issue, under the seal of this court, as prayed for in said information
55 and amended information, returnable on the first Monday of July next:

Now, therefore, these presents are to command you, the city council of the city of Keokuk, in the State of Iowa, at your first regular meeting after this writ shall be served upon you, to levy a sufficient tax upon all the property subject to taxation within the corporate limits of said city, to pay to relator a certain judgment recovered in this court on the 19th day of October, A. D. 1864, at the October term of this court, by said relator, against the city of Keokuk, Iowa, for the sum of five thousand four hundred and twenty-seven dollars

and fifty cents, ($5,427 50,) with 8 per centum interest from said date, and eighty-seven dollars and thirty-five cents costs, and also the costs of this proceeding, which said judgment was recovered upon 108 coupons or interest notes of said city, bearing date March 1st, A. D. 1856, payable to bearer, given for the payment of certain instalments of interest upon the certain bonds of said city, of the same date, for the sum of $1,000 each, payable to the Keokuk, M't Pleasant, and Muscatine Railroad Company, or bearer, twenty (20) years after said date, with interest, payable semi-annually;
56 and, further, that you cause said tax, so to be levied, to be collected and paid to relator or to his attorneys, upon said judgment, and costs, or in default thereof that you, the city council of the city of Keokuk, Iowa, show cause, if any you can, why said acts should not be done by you, and the relief prayed for by relator should not be granted, and that of this writ, and in what manner our commands should be executed by you, you are required to make due return to the justices of this court, on the 1st Monday in July, A. D. 1865. And hereof fail not, under the penalty of the law.

To the United States marshal for the district of Iowa, to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago, in said district, this nineteenth day of May, A. D. eighteen hundred and sixty-five, and of our independence the 89th.

WM. H. BRADLEY, *Clerk.* [SEAL.]

[50-cent rev. stamp, cancelled.]

Marshal's return.

Rec'd a writ, of which this is a true copy, June 6th, 1865. Served the same on the city of Keokuk, by reading the same to Wil-
57 liam Patterson, mayor of the city of Keokuk, Lee county, Iowa, on the 6th day of June, 1865, in the city of Keokuk, Lee county, Iowa. I also served the same writ on the following named persons, members of the board of city council, of the city of Keokuk, Iowa, by reading the same severally to H. B. Ten Eyck, R. H. Gillmore, Edward Mumm, Edmund Yager, Freeman Knowles, J. H. Seaton, William Abett, on the 6th day of June, 1865, in the city of Keokuk, Iowa; I also left with each of them a true copy of this writ, at the same time and place.

For a more full return, see schedule attached, marked A.

A.

I acknowledge due service of this writ upon me.

JOHN W. CLEGHORN.

I also served the writ on John W. Cleghorn, one of the members of the city council of the city of Keokuk, Iowa, by reading the writ to Hannah Cleghorn, his wife, she being a member of his family, and over the age of 14 years, at his usual place of residence in the city of Keokuk, Iowa, on the 6th day of June, 1865; I also left with her a

true copy of the original writ at the same time and place; I also served the writ, of which this is a true copy, on H. K. Love, treasurer of the city of Keokuk, Iowa, by reading same to
58 him, on the 6th day of June, 1865, in the city of Keokuk, Lee county, Iowa; I also left with him a true copy at the same time and place; I also served the same writ on B. S. Merriam, clerk of the city council of the city of Keokuk, Lee county, Iowa, on the 6th day of June, 1865, in the city of Keokuk, Iowa; I also left with him a true copy of the original writ, at the same time and place. I left the original writ, of which this is a true copy, with William Patterson, mayor, in Keokuk, Iowa, June 6, '65.

The above-named persons served compose the entire board of the city council of the city of Keokuk, Lee county, Iowa.

PETER MELANDY, *U. S. Marshal*,
By H. FULTON, *Dept.*

Indorsed: Filed Sept. 29th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 13th day of October, A. D. 1865, said defendant, by its attorney, filed in said clerk's office its answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of def'ts.

United States of America, circuit court of the United States for the northern district of Illinois.

59 *Answer.*

UNITED STATES, on the relation of J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK.

Now come the city council of city of Keokuk, defendants, and for answer to the alternative writ of mandamus heretofore issued, say—

1. They admit said city of Keokuk is a municipal corporation within the State of Iowa, and relator is a citizen of the State of Pennsylvania.

2. Def'ts admit that relator brought suit against said city of Keokuk as a municipal corporation in circuit court of United States for the district of Iowa, and that said suit was transferred to this honorable court, and judgment obtained against said city of Keokuk, at the time and for the amount stated, and that subsequently thereto relator has demanded of these def'ts that they should levy and cause to be collected a tax for the payment of said judgment, and that said bonds and coupons were issued in pursuance of said acts and ordinances of city of Keokuk.

And for further answer defendants, the city council of the city of Keokuk, say:

60 3. They admit that they have not levied a tax to pay the said judgment or the coupons upon which the same was obtained.

4. But defendants say, further, that they have been and are ready, willing, and well disposed to obey all rules, orders, and mandates upon them by this court, and they have to show why they have not levied and caused to be collected and paid to relator a tax upon the taxable property in the said city of Keokuk, to the amount of his, relator's, judgment, the causes following, to wit:

On the 24th day of August, A. D. 1863, def'ts were about to proceed to levy and collect a tax for the payment of the interest on said bonds and other similar bonds, and that a petition in equity was filed in the district court of Lee county, Iowa, by H. B. Ten Eyck and others therein named as pl'ffs, against the mayor of the said city of Keokuk and against these defendants, the city council of the city of Keokuk, and the collector of the said city, to which suit these defendants were made defendants, and were duly served with notice on the 27th day of August, A. D. 1863, as required by the laws of the State of Iowa, which petition alleged the execution and issuing by the said city of Keokuk of the bonds and coupons in relator's petition described, and upon which he recovered judgment, and of

61 certain other bonds, and alleged that they, the pl'ffs, in said suit, were the owners of property in said city subject to taxation for municipal purposes, and that they brought said suit for themselves and other citizens, also property holders in said city, and having an interest in the subject-matter of said suit, but too numerous to be joined by name as pl'ffs in said cause; which said petition in equity further alleged that said bonds and coupons had been delivered to said Keokuk, Mount Pleasant, and Muscatine Railroad Company, and by them assigned to 3d parties, who were innocent holders, and further alleged that said city council had no authority in law to execute or issue the said bonds, and that the same were and are absolutely null and void, and that the laws of the State of Iowa, and the ordinances of the city of Keokuk, under which said bonds and coupons were issued, and which are set forth by relator, and under which he claims relief, are and were unconstitutional and void; a copy of said petition in said cause is filed herewith, and hereby referred to and made a part of this answer, for a more full and particular statement of the matters and things and the several allegations therein contained.

Def'ts state that the said petition contained a prayer for an injunction to restrain these def'ts and the other def'ts therein

62 named from levying or collecting any tax or assessment upon any of the property, real or personal, within the said city subject to taxation for municipal purposes, for the payment of the principal or interest of the bonds in relator's petition described, and on which relator recovered said judgment.

Def'ts further state that on the 21st day of August, A. D. 1863, and prior to the bringing of the suit in which relator recovered judgment, upon application to the Hon. George G. Wright, one of the judges of the supreme court of the State of Iowa, an order for

an injunction was made by the said judge, in accordance with the prayer in said petition, upon the clerk of the said district court of Lee county, Iowa, and upon the 9th day of October, A. D. 1863. a writ of injunction was duly issued by the clerk of the said court, and the same was served upon these defendants, enjoining and restraining these def'ts, and their successors in office, and the mayor and collector of the said city of Keokuk, from levying or collecting any tax upon any property within the said city of Keokuk, for the payment of the principal or interest of said bonds, or any of them, and from doing any others acts therein, copy of which order for and writ of
63 injunction are filed herewith and made a part of this answer.

Def'ts state that they appeared, by counsel, and filed a demurrer thereto, and contested the right of pl'ffs in the said cause to the said junction and to the relief by them claimed, and that such proceedings were had in the said cause that on the 19th day of September, A. D. 1863, the pl'ffs in said cause recovered and obtained a decree in the said district court making perpetual the preliminary injunction before granted, and perpetually restraining these defendants from levying or collecting any tax within said city for the payment of said bonds, or the interest thereon, described in relator's petition, copy of which decree is filed herewith and made a part of this answer.

Def'ts state that afterwards they appealed the said cause to the supreme court of the State of Iowa, to the October term thereof, and such proceedings were had in said cause in said court that upon the ninth day of December, A. D. 1863, the judgment and decree of the district court were affirmed, copy of the record of which court is filed herewith and made a part of this petition.

Def'ts state that, by reason of the said proceedings, they have been, and are perpetually, enjoined and restrained by the dis-
64 trict court of Lee county, Iowa, from levying and collecting any tax to pay the principal or interest of said bonds upon which relator has recovered judgment, and that the said order and injunction of the said district court has been affirmed by the superior court of the State of Iowa, which judgment and decree are in force and unreversed, and that these def'ts have no right or authority to levy or collect any tax for the payment of said bonds or the interest thereon, or for the payment of the said judgment recovered by the relator against the said city of Keokuk.

Def'ts state that if they should proceed to obey the mandate of this court in the alternative writ of mandamus contained, and proceed to levy and collect the tax therein ordered for the payment of relator's judgment, they would thereby be guilty of contempt of the said district court of Lee county, Iowa, and of the supreme court of Iowa, and of the order and injunction of the said court, and would be arrested under the order and warrant of the said court, and by reason of the premises; though well disposed towards this honorable court, they are wholly and utterly unable to levy or collect the said tax, or to do as by said writ commanded.

65 *Count No. 5.*—Def'ts, for further answer, say that there was and is no law authorizing and empowering the said city of Keokuk to execute and issue the said bonds, and that all the laws and ordinances under which said bonds and coupons were issued, set forth in the petition of relator, have been declared unconstitutional, null, and void by the supreme court of the State of Iowa, and the said bonds have been declared void and of no binding force or validity by the said supreme court, and under the reported decisions of the supreme court of Iowa, where the said bonds were executed and issued, made before the said judgment obtained in this court by relator, they were, and have been, and now are, held and declared to be null and void, and not binding upon the said city of Keokuk.

Defendants therefore pray the court that the said rule against them may be discharged, and that they be dismissed with their costs herein expended.

H. STRONG,
Att'y for City Council of City of Keokuk.

STATE OF IOWA, *Lee county, ss:*

I, William Patterson, as mayor of the city of Keokuk, Lee
66 county, and State of Iowa, being first duly sworn, on oath state that I am mayor of the said city of Keokuk and president of the city council of the said city, and knowing to the truth of the facts stated in foregoing answer by and for the city council of the said city, and am authorized and instructed by the said city council to make this affidavit, and that the facts stated and allegations contained, and that the matters and things set forth in the said answer to the alternative writ of mandamus, are true, as I verily believe.

Witness my hand and the seal of said city, this 5th day of October, A. D. 1865.

WM. PATTERSON,
Mayor of the City of Keokuk and President of the City Council of City of Keokuk.

STATE OF IOWA, *Lee county:*

Subscribed and sworn to this 15th day of October, A. D. 1865, before me, Edward Mumm, a notary public, by William Patterson, mayor of the city of Keokuk. Witness my hand and notarial seal on said day last above named.

[SEAL.]

EDW'D MUMM,
Notary Public, Lee County, Iowa.

STATE OF IOWA, *Lee county:*

67 Subscribed and sworn to by William Patterson, mayor of the city of Keokuk, before me, this 10th day of October, A. D. 1865. Witness my hand and the seal of said court.

[SEAL.]

D. H. L. SUER,
Clerk of the District Court, Lee County.

Indorsed: Filed Oct. 13th, 1862.

WM. H. BRADLEY, *Cl'k.*

Transcript from Lee co.

On the same day, to wit, the 13th day of *of* October, A. D. 1865, said defendant, by its attorney, filed in said clerk's office a transcript of a record from the district court of the county of Lee, in the State of Iowa. Which said transcript is in words and figures following, to wit:

STATE OF IOWA, *County of Lee:*

In the district court of the 1st judicial district, held at Keokuk, State and county aforesaid. His honor, Francis Springer, judge, presiding.

Be it remembered, that heretofore, to wit, on the 24th day of August, A. D. 1863, a petition was filed in the above-named court, in words and figures following, to wit:

68 H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, Uriah Raplee, pl'ffs,
vs.
THE MAYOR and CITY COUNCIL OF THE CITY of Keokuk and the collector of said city, def'ts.

Your petitioners, H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, Uriah Raplee, pl'ffs, herein reprsent; that they are citizens and residents of the city of Keokuk, Lee county and State of Iowa, and are the owners of property, real and personal, therein subject to taxation.

Pl'ffs for themselves, and other citizens too numerous to be joined in this suit, further state that heretofore, to wit, on or about the 1st day of January, A. D. 1856, the city council of Keokuk, a municipal incorporation existing under the laws of the State of Iowa, by resolution of the said city council, subscribed 400,000 dollars to the capital stock of the Keokuk, Fort Des Moines and Minnesota Railroad Company, an incorporation existing under the laws of the State of
69 Iowa, to enable the said company to construct a railroad from the city of Keokuk, in Lee county, to the city of Fort Des Moines, in Polk county, in said State aforesaid.

Pl'ffs further state that the mayor of the said city did, in pursuance of a resolution of the city council of said city, *did* execute and issue and deliver to said railroad company, in payment of said subscription, 400 bonds, in the name of said city, of 1,000 dollars, of said date, payable 20 years from date, with 8 per cent. per annum, interest payable semi-annually, according to certain interest coupons attached thereto; all of which bonds, except 2, are outstanding and unpaid.

2d. Pl'ffs further state that the said city council of said city did, on or about July 1st, 1856, subscribe, in name of said city, one hundred thousand dollars to the capital stock of the Mississippi and Wabash Railroad Company, a corporation existing under the laws of the

State of Illinois, to aid in building a railroad in said State of Illinois, and did execute therefor, through the mayor of the said city, the bonds of the said city, being one hundred bonds of one thousand dollars each, payable 20 years from date, with 8 per cent. interest per annum, payable simi-annually, according to the tenor and
70 effect of certain interest coupons thereto attached; which bonds are wholly outstanding and unpaid.

3d. And the said city council of said city did, by resolution of said board, March 1st, 1856, in behalf of said city, subscribe one hundred thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscantine Railroad Company, an incorporation existing under the laws of the State of Iowa, to aid said co. in building a railroad from the city of Keokuk, Iowa, to the city of Muscatine, Iowa, and did, in the name of said city, through the mayor thereof, execute and deliver to said railroad company 100 bonds, of 1,000 dollars each, payable 20 years from date, to said R. R. co. or bearer, with 8 pr. cent. pr. annum interest, according to certain interest coupons attached thereto; which bonds are yet outstanding and unpaid.

4. Pl'ffs further state that the city council of said city did, July 3d, 1857, through the mayor of said city, and in the name of the said city, execute and deliver to said Mississippi and Wabash Railroad Co. 50 other bonds of 1,000 dollars each, to aid in building said road, and in payment of further subscription of stock thereto; 16 of said bonds payable Sept. 1, 1859, and 16 of them payable Sept. 1st, 1861,
71 and 18 of them payable Sept. 1st, 1863, to said railroad co. or bearer, and all drawing interest at 8 pr. cent. pr. annum, as pr. interest warrants or coupons attached, and none of said bonds have been paid and are all outstanding.

5. Pl'ffs further state that the city council of the said city did, on the 1st day of May, 1857, in the name of said city, by her mayor, execute, issue, and deliver to the said Keokuk, Fort Des Moines, and Minnesota Railroad Co. 150 other and additional bonds of 1,000 dollars each, in payments of a subscription to the capital stock of said railroad company, and payable, 50 of them in one year, 50 of them in 2 years, and 50 of them 3 years from date, with 10 p'r cent. interest p'r annum, payable semi-annually, according to tenor and effect of certain interest coupons thereto attached, which bonds are wholly outstanding and unpaid.

Pl'ffs state that all of the said bonds hereinbefore described, said bonds and coupons have been assigned by the said several railroad companies to which they were issued, and are now in the hands of third persons, who bought the same in open market, before maturity, for a valuable consideration, and that the holders of said bonds are unknown to pl'ffs, and are too numerous to be made parties to
72 this suit.

6. Pl'ffs further state that the city council of said city had no authority to make the said subscription to said railroad companies, or any of them, nor to execute or issue or deliver to them, or any of them, the said bonds of said city, with the coupons annexed, in the name of said city; that the said city received no consideration for the

said bonds or coupons except certificates of stock in the said several railroad companies to an amount equal to the bonds issued; that the said railroad companies were organized and formed to construct railroads without the limits of said city, and said road companies are private corporations for pecuniary profit, in no way connected with the city, and from which said city derives no profit or emoluments.

7. That said city of Keokuk is a municipal, and had no authority under the charter to construct railroads without her corporate limits, or to issue bonds to aid in the construction of any of the said railroads.

8. That said bonds were executed and issued by the proper officers of said city, under the direction of said city council, and in
73 pursuance of a resolution thereof, without authority of law, and were and are absolutely void; that the issuing of the said bonds was a fraud upon the rights of pl'ffs; that the several acts of the legislature of the State of Iowa authorizing the issue of the bonds described in the said counts of pl'ffs' petition, being an act entitled , and approved , and the acts of legislature of said State curing, establishing, and making legal and binding the said bonds described in said counts of this petition, being an act entitled an act , and approved , to which acts reference is hereby made, were and are null and wholly unconstitutional and void, and did not authorize the issuing of the said bonds, or any of them, or legalize or make binding the said bonds, or any of them, which had been issued.

9. Pl'ffs further state that the city council of the said city have levied a special tax of one per cent. upon the assessed value of all the taxable property, real and personal, within the limits of the said city subject to taxation for State and county purposes, according to the assessment made by the city assessor for the year A. D. 1863, to be applied towards the payment pro rata of the interest due
74 on said bonds, and the clerk of the said city, in pursuance of a resolution of said city council, has made out a tax list of all of the property in said city, including that of your petitioners, in accordance with the said assessment and levy.

10. Pl'ffs further state that the collector of said city, in pursuance of a resolution of the city council of said city, is now about to collect the said special tax for the payment of interest upon said bonds, and is about to proceed to advertise and sell, under the laws and ordinances of the said city of Keokuk, all of the property, real, personal, and mixed, within the limits of said city subject to taxation, including the property of your petitioners, for the payment of the said special tax, which under the laws and ordinances of said city has become delinquent.

11. Pl'ffs state that the said bonds, issued as aforesaid in the name of the said city for subscription of stock to said railroad companies without authority of law, amount now, with the accumulated unpaid interest, to over one million dollars, which is a great

and ruinous burden and incumbrance upon the property of your petitioners lying within the said city, and upon the property of all
75 the citizens of said city lying within the limits thereof; that unless restrained by your honorable court the said city collector will proceed to advertise and sell the property of your petitioners, and pay the said special tax levied as aforesaid, by which your petitioners and all other property holders will sustain great loss and damage, and your petitioners are without remedy at law in the premises.

12. Pl'ffs further state that the said city council and mayor of the said city are about and intend and threaten to proceed from year to year to levy a further and additional special tax each year upon all of the taxable property in said city, for the payment of the principal and interest of the said bonds as they mature, unless restrained from so doing by your honorable court, and to sell the property of pl'ffs and other property holders for that purpose, by which pl'ffs and others will sustain further and additional loss and damage.

Pl'ffs state that the said city council have no authority to levy any tax for the payment of principal or interest upon said bonds, and the collector of said city has no authority in law to collect said tax, and the taxable property of your petitioners and others in said city
76 should not be made liable for the payment of said tax.

Wherefore pl'ffs make the said city council of said city and the mayor and collector of said city defendants herein, and pray that they be required to answer this petition; and pl'ffs further pray that the collector of the said city be perpetually enjoined from collecting said tax or any tax for the payment of said bonds or the interest thereon, and from advertising or selling any of the taxable property within the said city for that purpose; that the city council and mayor of the said city, and their successors in office, be perpetually enjoined from levying any special or general tax or assessment upon any of the taxable property within the limits of the said city for the payment of the principal or interest of the said bonds, and that each and all of the said defendants and their successors in office be restrained and forever enjoined from doing any act or thing in or towards levying or collecting any tax or assessment, general or special, upon the taxable property in said city, for the payment of the principal or interest upon said bonds or any of them,
77 and from receiving or collecting any tax for that purpose, and that the levy of the said special tax be declared illegal, null, and void, and no lien upon any of the property subject to taxation within the limits of the said city, and said property be declared free and clear of the lien of said tax, and that to this end a writ of injunction issue, which, upon final hearing, your petitioners pray may be perpetual on behalf of pl'ffs and all other property-holders of said city, upon said defendants and their successors in office, and for other relief equitable in the premises.

RANKIN & McCRARY,
Att'ys for Petitioners.

STATE OF IOWA, *Lee county, ss:*

I, H. B. Ten Eyck, one of the pl'ffs in the above-entitled suit, being duly sworn, on oath state that I believe the allegations contained in foregoing petition are true.

H. B. TEN EYCK.

STATE OF IOWA, *Lee county:*

Subscribed and sworn to by H. B. Ten Eyck, before me and in my presence, this 20th day of August, A. D. 1863.

78 Witness my hand and notarial seal.

J. D. SPRINGER, *N. P.* [SEAL.]

Following is an order allowing the injunction, to wit:

STATE OF IOWA, *ss:*

Let the writ of injunction issue as prayed for, the petitioner giving bond in the sum of ten thousand dollars ($10,000) to the approval of the clerk of the district court.

Keosauqua, Aug. 21st, 1863.

GEO. G. WRIGHT,
Judge Supreme Court.

To the clerk district court, Lee county, Iowa.

And afterward, to wit, on the 24th day of August, a bond was made, in words and figures following:

Know all men by these presents that we, H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee, principals, and A. L. Connable, sureties, are held and firmly bound unto the city of Keokuk and the collector, &c.. in the penal sum of ten thousand dollars, for the payment of which we obligate ourselves.

The condition is that the said principals have filed their petition in chancery in the office of the clerk of the district court of Lee

79 county, Iowa, at Keokuk, against the mayor and city council of the city of Keokuk, and the collector, praying an injunction to prevent the collector of taxes to pay the interest on certain railroad bonds, &c., and an injunction has been allowed:

Now, if the said pl'ffs will pay all the damages that defendants may sustain by reason of this wrongful allowance of said injunction, and save said defendants harmless from all damages in case said injunction is dissolved, then this obligation is void; otherwise, in full force.

Witness our hands August 24, 1863.

H. B. TEN EYCK.
C. H. PERRY.
J. B. HOWELL.
J. W. CLEGHORN.
A. L. CONNABLE.
R. B. OGDEN.
U. RAPLEE.

Approved and Filed Oct. 9th, 1863.

CHARLES DORR, *Clk D. C.*
By EDW'D MUMM, *Dep'y.*

And a writ of injunction was issued of date October 9th, 1863, as follows:

STATE OF IOWA, *Lee county, ss:*

To the mayor and city council of the city of Keokuk and the
80 collector of said city, your agents, attorneys, and servants, and each and every of them:

Whereas H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee have filed their bill in chancery in our court, within and for the county of Lee, against you, the said mayor and city council of the city of Keokuk and the collector of said city, touching the matters therein complained of, and which bill is therein pending; and whereas said H. B. Ten Eyck *et al.* above named have obtained the allowance of an injunction from the Hon. Geo. W. Wright, judge of the supreme court of Iowa, as prayed for in said bill, and the said H. B. Ten Eyck *et al.* having filed a bond, with approved security, as required by the order of allowance:

We, therefore, in consideration of the premises, do strictly command and enjoin you, and your agents, attorneys, and servants, and all and every of you, that you, and every of you and your successors in office, do altogether desist from levying any special tax or general tax or assessment upon any of the taxable property within the limits of the city of Keokuk for the payment of the principal and interest of certain bonds mentioned in said bill, (as railroad
81 bonds,) and that each and all of you, and your successors in office, be restrained and forever enjoined from doing any act or thing towards levying or collecting any tax, general or special, or assessment upon the taxable property of the said city, for the payment of the principal or interest upon said bonds, or any of them, and from receiving or collecting any tax for that purpose, under the penalty of the law hence ensuing.

Witness Charles Doerr, clerk of the district court in and for said county, this 9th day of Oct., 1863.

CHARLES DOERR, *Clerk*,
By EDW'RD MUMM, *Deputy*.

Upon which is indorsed the return of the sheriff, in words and figures as follows:

This writ came into my hands on the 12th day of April, 1864, and on the same day I served the same on A. G. Richardson, collector of city of Keokuk, C. F. Davis and Wilkersham, members of the city council of the city of Keokuk, by reading the same to each of them in the city of Keokuk, Lee county, Iowa; and on the 13th day of April, 1864, I served the same on John Cleghorn, George Montague, and Cicero Hughes, members of the city council of the city of Keokuk, and J. M. Hiatt, mayor of said city, Lee county, Iowa, by reading the same to each of them, in the city of Keokuk, Lee
82 county, Iowa; and on same day I served the same on J. H. Seaton and Wm. Abbott, members of city council of said city

of Keokuk, by reading the same to each of them, in the city of Keokuk, Lee county, Iowa. H. B. Ten Eyck, a member of said city council, cannot be found in my county.

ISRAEL ANDERSON, *Sheriff Lee county, Iowa.*

I, also, on the 18th day of April, 1864, at 9 o'clock p. m., served the within writ on the mayor and city council of the city of Keokuk, in session, the mayor and city councilmen being all present, by reading the same to them personally, while they were in session in the city of Keokuk, Lee county, Iowa.

ISRAEL ANDERSON, *Sheriff Lee county, Iowa.*

And afterwards, an original notice was issued and served in words and figures, as follows:

[50-c. U. S. stamp.]

STATE OF IOWA, *Lee county, ss:*

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleighorn, Uriah Raplee,

vs.

83 THE MAYOR AND CITY COUNCIL OF THE city of Keokuk, and the collector of said city.

You are notified that there is now on file in the office of the clerk of the district of Lee county, Iowa, at Keokuk, the petition of H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee, claiming against the defendants, the mayor and city council of the city of Keokuk, and the collector of said city, an injunction restraining the defendants from levying and collecting taxes of the plaintiffs, and out of their property in the city of Keokuk, and of the citizens and residents of Keokuk, Lee county, Iowa, to pay the interest or principal of certain bonds issued by said city to certain railroad corporations in the petition described. Said petition alleges that said bonds were issued without the authority of law, and that the defendants are proceeding to collect the interest due on said bonds by distraining, &c. Said petition prays for a perpetual injunction and for general relief.

Unless you appear and answer said petition on or before the 2nd day, at noon, of the September term, 1863, of said court, com-
84 mencing on the first Monday of September, a decree will be taken as if confessed, and in accordance with the prayer of the petition.

RANKIN & MCCRARY, *Atty's for Pl'ffs.*

Upon this notice is indorsed the following return of the sheriff:

This notice came into my hands August 27th, 1863, and I served the same on the mayor of the city of Keokuk, by reading same personally to George B. Smyth, mayor of said city, and by delivering to him a true copy thereof in Keokuk, Lee co., Iowa, Aug. 27th, 1863. Served same also on the collecter of said city, by reading same per-

sonally to A. G. Richardson, the collector of said city, and by delivering to him a true copy thereof, in Keokuk, Lee co., Iowa, August 27th, 1863. Served same also on the city council of the city of Keokuk, by reading same personally to B. S. Merriams, clerk of said city council, and by delivering to him a true copy thereof, in Keokuk, Lee county, Iowa, August 27th, 1863.

N. G. HEDGES, *Sheriff Lee Co., Iowa,*
By D. B. SMITH, JR., *Dep'y.*

And afterwards, to wit, on the 24th day of August, A. D. 1863, a demurrer was filed in words and figures following:

85 *Demurrer by defendants.*

District court of Lee county, Iowa, at Keokuk.

H. B. TEN EYCK and OTHERS, pl'ffs,
vs.
THE MAYOR OF CITY OF KEOKUK and OTHERS, def'ts.

Now come the defendants, the mayor of the city of Keokuk and the city council and collector of city of Keokuk, by Henry Strong, their attorney, and demur to the petition of pl'ffs, and state the said petition does not state facts sufficient to constitute a cause of action, and entitle pl'ffs to the relief claimed.

1st. Petition shows that said bonds executed and issued in name of the city of Keokuk were regularly issued by the proper officers of the said city, in pursuance of a resolution of the city council of said city, and in payment of a subscription by said city to the railroads named.

2d. The said city of Keokuk, through her proper officers, had a right to subscribe to the capital stock of said railroads, and to issue the bonds of the city in payment thereof, and the city council of said city have a right to levy a tax upon the taxable property in said city in payment of the interest and principal of said bonds, as they
86 mature, and the city collector is authorized and legally bound to collect the said tax after the same has been levied.

3. Under the constitution and laws of the State of Iowa the said city of Keokuk, through her proper officers, had full authority to execute and issue the said bonds, and pl'ffs' petition shows that said city did receive a valuable consideration for the issuing of said bonds in an equal amount of certificates of stock of the several R. R. companies to which said bonds were issued.

4. Pl'ffs' petition shows upon its face that said bonds are now in the hands of innocent holders, who bought them before maturity for valuable consideration, and being in the hands of such holders they are binding upon said city.

5. Pl'ffs' petition shows that said bonds described in the counts of their petition were ratified and legalized by an act of the general assembly of the State of Iowa, and are, therefore, legal and binding upon said city.

6. Pl'ffs' petition shows that the bonds described in the counts of their petition were authorized by an act of the general as-
87 sembly of the State of Iowa, and were issued in pursuance of said act, and are therefore legal and binding upon said city.

7. The petition of pl'ff shows that said bonds are legal, valid, and binding upon said city, and the property of pl'ffs and other persons in said city is liable to be assessed and taxed in the manner prescribed by law for the payment of the same as they shall mature.

8. There is no equity in petition of pl'ff as shown upon its face; and petition shows that pl'ffs are not entitled to relief claimed, and def't prays that the injunction granted be dissolved and def'ts' bil dismissed.

HENRY STRONG, *Att'y for defendants.*

And afterwards, to wit, on the 19th day of September, A. D. 1863, a decree embodying a bill of exception was filed as follows:

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee,
vs.
THE MAYOR AND CITY COUNCIL OF THE CITY OF Keokuk, the collector of said city, &c.

This cause came up for hearing on the petition of plaintiffs'
88 property-holders of the city of Keokuk and representatives of all the holders of property in said city, and the demurrer of defendants, the former represented by Rankin and McCrary, their attorneys, and the latter by Henry Strong, their attorney, and the court being advised in the premises finds that said city, through its mayor and council, about to levy a heavy tax on the taxable property of the plaintiffs and other property-holders to pay the interest on certain railroad bonds in the petition described. The court further finds that said bonds are void and of no binding obligation, they having been issued without the authority of law. The court therefore overrules the demurrer of, and the defendants having decided to stand on their demurrer and not answer, the court orders, adjudges, and decrees that the temporary injunction allowed in this case to be made perpetual.

It is further ordered, adjudged, and decreed that the defendant, the city of Keokuk, through its officers aforesaid, levy no taxes for the purposes specified in the petition: and that the collector of said city and his successors collect no tax for the payment of any of the railroad bonds described or the interest on the same.

89 The defendants excepted at the time to the several rulings, orders, and decrees, and asked the court to sign this as a bill of exceptions, and decree, which is done.

Sept. 19, 1863.

FRANCIS SPRINGER, *Judge.*

And afterwards, on the 2d day of October, A. D. 1863, an appeal was filed in this case, as follows:

District court, Lee county, Keokuk, Iowa.

H. B. TEN EYCK and OTHERS
vs.
MAYOR OF CITY OF KEOKUK and OTHERS.

To H. B. Ten Eyck and others, pl'ffs, or Rankin and McCrary, their att'ys, and Chas. Doerr, clerk of said court:

You are hereby notified that defendant has appealed from the judgment of said district court in the above-entitled cause to the supreme court of State of Iowa.

HENRY STRONG, *City Att'y.*

We hereby acknowledge service of foregoing notice of appeal, and waive time, and agree that this case shall be heard at October term, A. D. 1863, of supreme court at Davenport.

Oct. 1st, 1863.

CHAS. DOERR, *Clerk D. C.*
By EDW'D MUMM, *Dep'y.*

RANKIN & MCCRARY, *Att'ys for Pl'ff's.*

90 STATE OF IOWA, *Lee county:*

I, D. H. Le Suer, clerk of district court, State and county aforesaid, hereby certify that the foregoing is a true transcript of the papers and record entries made in the above-entitled cause.

Witness my hand and seal of the court, this 4th day of March, A. D. 1865.

[SEAL.] D. H. LE SUER, *Clerk.*

[5-ct. rev. stamp, cancelled.]

STATE OF IOWA, *County of Lee, ss:*

I, Francis Springer, sole judge of the district court of the first judicial district, (in which is the county of Lee,) hereby certify that D. H. Le Suer, whose genuine signature appears to the foregoing certificate was at the dates thereof, and still is, clerk of the district court within and for the county of Lee, duly elected and qualified, that the seal by him thereto affixed is the seal of said court, and that his attestation is in due form.

In testimony whereof, I hereto subscribe my name this 4th day of April, 1865.

FRANCIS SPRINGER, *Judge.*

[5-ct. rev. stamp, cancelled.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Clerk.*

91 On the same day, to wit, the 13th day of October, A. D. 1865, said defendant, by its attorneys, filed in said clerk's office its transcript of a record from the supreme court of Iowa; which said transcript is in words and figures following, to wit:

Transcript supreme court of Iowa.

At a supreme court of the State of Iowa begun and holden at the city of Davenport, on the 6th day of October, A. D. 1863,

Present: The Hon. Caleb Baldwin, C. J.; George G. Wright, Ralph P. Lowe, judges.

Among other the following proceedings were had, to wit:

H. B. TEN EYCK
vs.
THE MAYOR AND CITY COUNCIL OF KEOKUK, app'l't. } Appeal from Lee co.

This day this cause, coming on for hearing, was submitted to the consideration of the board, with leave to file written arguments.

And afterwards, to wit, on the 9th day of January, 1864, at the Dec. term, 1863, at the city of Des Moines, the following proceedings were had and ordered to be made of record, to wit:

92 *Appeal from Lee county.*

H. B. TEN EYCK
vs.
THE MAYOR AND CITY COUNCIL OF KEOKUK, app'l'ts.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the judgment and proceedings of the court below herein and file their written opinion.

It is therefore considered and adjudged by the court that the judgment of the court below be affirmed, and that a writ of prosedendo issue accordingly, and that the appellee have and recover of and from the appellants his costs in this behalf, laid out and expended at this court taxed at $, and that execution issue therefor.

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true, full, and complete copy of the record entries in the case to which it refers, as full, true, and complete as the same now appears of record in my office.

Witness my name and the seal of said court hereto affixed.

93 Done at the city of Des Moines this 15th day of June, 1865.

[SEAL.] LEWIS KINSEY, *Clerk.*

[5-ct. rev. stamp, cancelled.]

STATE OF IOWA, *Supreme court, ss:*

I, George G. Wright, chief justice of the supreme court of Iowa, hereby certify that Lewis Kinsey, whose genuine signature is affixed to the above and foregoing certificate, was at the time of signing the same clerk of the supreme court within and for the State of Iowa, and that full faith and credit are due to his official acts as such clerk.

Given under my hand this 15th day of June, A. D. 1865.

GEO. G. WRIGHT,
Ch'f Justice Supreme Court, Iowa.

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On the same day, to wit, the 13th day of October, A. D. 1865, came said relator, by his attorney, and filed in said clerk's office his demurrer in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

94 United States circuit court for the northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, respondents.
} Mandamus.

Demurrer of relator to the answer and return of respondents:

And now comes relator in the above-entitled proceedings and demurs to the answer and return of the respondents to the alternative writ of mandamus, and says the matters and things set up herein, are insufficient in law to bar relator of the relief prayed for herein in that relator was not made a party to the injunction proceedings had in the supreme court of Iowa at the suit of H. B. Ten Eyck *et al. vs.* the respondents herein.

2. That court had no jurisdiction of the proper parties, the bondholders, and none of them were made defendants to said bill of injunction.

3. Because, as it appears from the bill in said injunction suit, (made part of respondent's return herein,) said decision of the supreme court of State of Iowa declaring said railroad bonds invalid and un-
95 constitutional, and perpetually enjoining the collection, same was had long after the execution and sale of said negotiable bonds to insolvent purchasers, and that this reversal earlier settled decisions of the same supreme court. And this court, therefore, is not bound in law and will not follow the last decision of the State court in such a case.

4. Because this court, since the decision of Ten Eyck *et al. v.* city council of the city of Keokuk in supreme court of Iowa, has held the same bonds thus enjoined to be good and valid, and has given relator judgment thereon, and this court will not now withhold the remedy when it has established the right of relator upon said bonds.

5. Because it is not competent for the State court of Iowa to oust this court of its jurisdiction to enforce its own judgments, and no decree of the supreme court of Iowa to which relator was not made a party is of any valid or binding force to bar relator from using the process of this court to collect his judgment.

6. Because said injunction suit in the State courts was instituted and said decree was obtained by consent and collusion of respondents and to forestall action for the enforcement of the collection of
96 said railroad bonds in the United States courts.

Whereupon relator prays the award and issuance of a peremptory writ of mandamus herein, &c.

H. SCOTT HOWELL, *Att'y for Relator.*

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On the same day, to wit, the 13th day of October, A. D. 1865, came said parties, by their attorneys, and filed their stipulation in said entitled cause; which said stipulation or agreement is in words and figures following, to wit:

Agreement.

U. S. circuit court, northern district of Ill.

U. S., *ex rel.* J. Edgar Thomson,
v.
CITY COUNCIL OF KEOKUK. } Mandamus.

It is hereby agreed by the parties to the above-named action that either party may read as evidence on the trial of said action any of the ordinances, city charter, amendments thereto, and laws of the State of Iowa contained in a printed volume published by authority of the city council of the city of Keokuk, in 1860, entitled
97 "The charter and ordinances of the city of Keokuk (to August 6, 1860,) together with acts of the general assembly relating to the city," &c., without further proof or certificate.

It is further agreed that the record of proceedings in case of Ten Eyck and others *vs.* city of Keokuk may be read in evidence without being certified by a judge of the court.

Sept. 23, '65. H. SCOTT HOWELL, *Att'y for Relator.*
H. STRONG, *City Att'y, Keokuk.*

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Clk.*

[5 ct. rev. stamp.]

On this day, to wit, the seventeenth day of October, in the adjourned October term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, in the State of Iowa. } Petition for mandamus.

This day came J. Edgar Thomson, relator in the above-entitled cause, by H. Scott Howell, his attorney, and came also the respondents, by Henry Strong, their attorney, and this cause came on for hearing upon the demurrer of relator to the answer and re-
98 turn of respondents to the alternative writ of mandamus issued in this cause, and the agreement of parties on file as to ad-

mission of the printed ordinances, &c., and after the hearing of argument therein, and consideration of the premises, the court overruled said demurrer, except as to count number five of said answer to which demurrer is sustained, and relator by his counsel at the time excepts to said ruling. It is thereupon considered and ordered that respondents go hence without day, and that the rule upon them to show cause be discharged, and that they have and recover of the relator their costs in this behalf to be taxed.

On this day, to wit, the seventeenth day of October, A. D. 1865, came said relator, by his attorneys, and filed in said clerk's office his bill of exceptions in said entitled cause, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

99 United States circuit court, northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel* J. Edgar Thomson, relator. *v.* THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, respondents.	In error.

Be it known that on this seventeenth day of October, A. D. 1865, at the October term of our said court, there came the United States, at the relation of J. Edgar Thomson, by H. Scott Howell and Woodbridge and Grant, his att'ys, and there also came the respondents, the city council of the city of Keokuk, Iowa, by Henry Strong, their attorney, and this cause of mandamus came on to be heard upon the issue joined thereon by the demurrer of the relator to the answer, and return of the respondents to the alternative writ of mandamus issued herein, in connexion with the written agreement of parties on file in this cause, respecting the introduction and consideration of the volume of the printed ordinances of said city, which answer and return of respondents is in words and figures following, to wit:

(Said answer is correctly copied on pages 58 to 93, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*)

100 And which demurrer of relator thereto is in the words and figures following, to wit:

(Said demurrer is correctly copied on pages 93 to 96, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*

And which agreement for the introduction and consideration by the court of the printed volume of the ordinances, &c., of said city of Keokuk is in the words and figures following, to wit:

(Said agreement is correctly copied on pages 96 to 97, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*)

And, after argument of counsel, the court, on consideration of the premises submitted thereto, doth sustain the demurrer of the relator

to the paragraph or subdivision of said answer, and return as therein mentioned five (5,) and doth overrule the said demurrer upon each and all other grounds therein set forth.

To which latter ruling of said court overruling said demurrer upon the causes stated, and to each of them, the said relator at the time then and there excepted, and standing upon his said demur-
101 rer, and each and every cause of demurrer therein set out, prays that this his bill of exceptions may be signed, sealed, and made part of the record, which is accordingly done.

DAVID DAVIS. [SEAL.]
THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed Oct. 17th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 28th day of November, A. D. 1865, came said relator, by his attorneys, and filed in said clerk's office his appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thomson, relator, *vs.* THE CITY COUNCIL OF THE CITY OF Keokuk, Iowa, respondents. } Mandamus in error.

102 Know all men by these presents, that we, J. Edgar Thomson, relator, as principal, and Heman J. Lombant, as security, are hereby held and firmly bound unto the city council of the city of Keokuk, Iowa, respondents, in the above-named suit, in the penal sum of five hundred dollars. To the payment of which well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this first day of November, 1865.

Whereas the above-named J. Edgar Thomson, relator, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled suit, by the circuit court of the United States for the northern district of Illinois. Now, therefore, the condition of this obligation is such that if the above-named J. Edgar Thomson, relator, shall prosecute his writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue in law.

103 J. EDGAR THOMSON. [L. S.]
HEMAN J. LOMBANT. [L. S.]

Sealed and delivered in the presence of us—
W. J. HOWARD.
SAM'L L. CLEMENT.

This bond is approved.

CITY OF PHILADELPHIA, *ss:*

On this first day of November, A. D. 1865, before me, Samuel L. Clement, notary public for the commonwealth of Pennsylvania, residing in the city of Philadelphia, personally appeared the above-named Heman J. Lombant, who, being by me duly affirmed according to law, declares and says that he is worth five hundred dollars over and above the sum of three hundred dollars exempted by law.

HEMAN J. LOMBANT.

Affirmed to and subscribed before me the day and year aforesaid, as witness my hand and seal.

SAM'L L. CLEMENT, *Notary Public.* [SEAL.]

Approved. THOMAS DRUMMOND.

Indorsed: Filed Nov. 28th, 1865.

WM. H. BRADLEY, *Clerk.*

104 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify the above and the foregoing, from pages one to one hundred and three, inclusive, to be a true and complete transcript of the record of all the proceedings which have been had in the cause in said court wherein the United States, on the relation of J. Edgar Thomson, is plaintiff, and the city council of the city of Keokuk, Iowa, is defendant, as appears from the records of said court now remaining in my custody, and that the original writ of error and citation issued herein by the plaintiff in error are hereunto appended to said record or transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said northern district of Illinois, this fourth day of December, A. D. 1865.

WM. H. BRADLEY, *Clerk.*

[5-ct. rev. stamp.]

O

Supreme Court of the United States.

UNITED STATES *ex rel.*, J. EDGAR THOMPSON,,
PLAINTIFF IN ERROR,
vs.
CITY COUNCIL OF THE CITY OF KEOKUK, IOWA,
DEFENDANTS IN ERROR.

No. 247, December Term, 1866.

BRIEF AND ARGUMENT BY J. H. CRAIG, ATTORNEY FOR DEFENDANTS IN ERROR.

This is a proceeding in *Mandamus*, to compel respondents to levy a tax to pay a certain judgment obtained by relator against the city of Keokuk, Iowa, in the Circuit Court of the United States for the Northern District of Illinois, upon the coupons of certain railroad bonds issued by the said city in payment of her subscription to the capital stock of the Keokuk, Mt. Pleasant and Muscatine Railroad Company.

This judgment is for the sum of $5,427 50, with 8 per cent. interest and costs of suit. It was obtained on the 19th day of October, 1864, at the October term of said Circuit Court; but the

record does not disclose at what time the suit, on which the said judgment was obtained, was instituted.

The petition in this case was filed on the 14th day of January, 1865. The alternative writ was issued on the 19th of January, 1865. The first service of the writ was made on the respondents on the 17th of February, 1865. This was quashed, and a new service of the alternative writ was made on the respondents on the 6th of June, 1865.

The defense relied on by these respondents, is presented in the 4th count or division of their return to the alternative writ, and the exhibits thereto attached, found on the 26th and 27th pages of the printed record in this case.

The defense thus set forth is briefly to the effect, that respondents had been absolutely and perpetually enjoined from levying said tax, by decree of the District Court of Lee county, Iowa, and the Supreme Court of Iowa, on the petition of seven citizens and tax-payers of Keokuk, filed on behalf of themselves and other citizens of said city, too numerous to join in said suit.

Personal service of notice of this injunction suit was made on these respondents on the 27th day of August, 1863. The final decree of said District Court making the injunction perpetual was rendered on the 19th of September, 1863, thirteen months prior to the date of relator's judgment. The said decree of the District Court, on appeal, was affirmed by the Supreme Court of the State of Iowa, on the 9th of December, 1863. Although the record does not disclose the date of the commencement of the suit on which relator recovered his said judgment; yet the relator's demurrer admits the allegation of the return, that it was commenced after the said injunction was ordered.

A full and complete record of said injunction suit, both in the District Court and Supreme Court of Iowa, is filed with said re-

turn, as a part thereof, showing all the averments of the return more fully and at large.

The relator demurred to the return. This demurrer was overruled by the Circuit Court as to said fourth count or division; and the relator brings the cause to this Court on writ of error.

The record thus presents the question: Do the facts and averments set out in said fourth division of respondent's return to the alternative writ, and appearing at large in the Exhibits filed therewith, constitute a good defense to this proceeding?

In the first place, it is a proposition in accordance with the nature and purposes of the writ of mandamus, with sound reason and common justice, and with all authority, that the writ is never granted ordering officers or parties to put themselves in positive conflict with the order of a Court of competent jurisdiction.

Mandamus is supplemental to all other actions and proceedings, and is never granted where there is any other adequate remedy. It is an extraordinary and summary remedy, allowed in the absence of all others, to prevent a failure of justice. But no Court would be justified in doing an act of positive injustice to innocent officers or parties, even to prevent a failure of justice. It is better to leave parties to the ordinary remedies which the laws provide, even though justice may fail, than to subject innocent persons to injustice and punishment. To give an extraordinary remedy to one person, at the expense of another, who is not to blame, is in palpable conflict with the purpose of the writ of mandamus. It is to do injustice instead of preventing it. The writ is remedial, but to shift an alleged hardship or wrong from one party, and impose it on the shoulders of another who is without fault, is not remedial. It aggravates the hardship, instead of removing it. It makes the writ the instrument, instead of the cure of injustice. The nature and purpose of the writ is, therefore, inconsistent with the idea that it is to be used to command diso-

bedience to the order of a Court of competent jurisdiction; because it would place an innocent officer in the cruel position where he would be compelled to disobey one Court or the other, and in any event suffer the punishment of disobedience.

We are not vindicating here the just rights and authority of the Courts of Iowa, much less their action in this matter. But we are vindicating the conduct of the respondents. We insist that they have not been guilty of any default. They are neither the corporation of the city of Keokuk, nor its tax-payers; but they are officers charged with certain duties, which they have faithfully tried to perform. They were about to levy a tax upon the taxable property in Keokuk to pay the interest coupons on which relator recovered his judgment, when a suit to enjoin them was commenced in the District Court of Lee county, Iowa. They were duly served with process in said suit; a preliminary injunction was ordered against them, prior to the commencement of the suit on which relator recovered his judgment. This the demurrer admits. Respondents were citizens of Iowa. They could not escape the jurisdiction of the said District Court. It had served its process on them. Said suit submitted to that Court a matter which it had jurisdiction to decide. For it will hardly be denied that the said District Court was competent to enjoin the levy and collection of an illegal tax, on property, and by officers, subject to its jurisdiction, at the suit of the owners of such property; and though it might have erroneously held such tax illegal, that would not impair its jurisdiction to decide the question, nor the force of its decree while unreversed. Respondents contested said suit, both in the District Court and Supreme Court of Iowa. If they could have plead the pendency of this proceeding for a writ of mandamus, doubtless the Courts of Iowa would have conceded the jurisdiction to the Courts of the United States; but this respondents could not do, for the petition in this proceeding was not filed in the Circuit Court till the 14th day of

January, 1865, nor the alternative writ served on respondents till the 6th of June, 1865, while the final decree in the injunction suit in the District Court was rendered against respondents on the 19th of September, 1863, and affirmed in the Supreme Court of Iowa on the 9th of December, 1863. Respondents omitted no defense which they should or could have made, to said injunction suit. It was not their fault that relator did not commence this proceeding, nor even his suit for judgment on his coupons, until they had been enjoined. They could not anticipate even that he would sue in the Federal Court.

On the facts stated in the return the respondents stand in this Court without fault, and unless this Court can relieve them from the injunction, it has no right to command them to disobey it. This Court should not command the respondents to disobey the injunction, unless it can protect them in their disobedience. If they obey the mandate of this Court, and are imprisoned for contempt of the injunction, the Federal Courts can grant them no relief. They cannot reverse the decree ordering the injunction, for no appeal lies from the State Court to this Court in such a case. We understand that this point has been decided by this Court the present term. Neither can this Court treat the decree of the State Court as a nullity, as the counsel for relator asks it to do; for the subject matter of that injunction suit was clearly within the jurisdiction of the State Court. Individual citizens of Keokuk invoked the powers of the State Court to protect their property—which was also within the jurisdiction of that Court—from the levy of a tax which they claimed was illegal, and which they charged respondents had levied and were about to levy upon it. Respondents were made defendants and duly served with notice. This surely presents a case within the jurisdiction of the State Court,—a subject matter which the Court had the power to adjudicate, and parties which it had the power to bind by its decision. Whatever may be the effect of that decree on others, it absolutely

binds these respondents; to them it is the law. It is a legal impossibility for them to disobey it, and a legal absurdity for any Court to command them to disobey it. No Court ever did send its mandate to an innocent officer or party commanding him to put himself in direct conflict with the order of a Court having competent jurisdiction over him and the subject matter of such order. No such instance can be found in any decision.

The counsel for relator, after closing his eyes to the obvious application to this case, of the universally recognized rule, which would prevent all conflict between Federal and State Courts in matters of concurrent jurisdiction; and after blindly seeking for some other path to make "a flank movement," in despair of finding one, boldly challenges "the conflict," and invokes the power of the Government. The counsel here opens a fearful range to his artillery. He cuts the Gordian knot in despair of untying it. It was a heroic, but rather lawless spirit, which inspired the words: *Aut inveniam aut faciam viam.* They do not become a Court of Justice. We do not forget the motto: "*Fiat justitia ruat cœlum;*" but it is seldom necessary to overthrow the heavens in order that justice may be done. But if the counsel still insists on "the conflict"—whether it is to be carried on by opposing writs or arms—we protest against these respondents being thrust between the antagonists: or if they are to be thrust forward as a forlorn hope to draw the fire of the State Courts, the counsel is bound to show how the Federal Court can sustain them. As he has failed to show how the respondents can, at the same time, obey two contradictory writs, the one forbidding, and the other commanding the same act, we think that he is bound to show how the Federal Court is to release the respondents if they should be imprisoned for contempt of the injunction; for he has no right to ask this Court to command them to disobey the injunction unless he can show that this Court has the power to protect them in so doing. The remedy, if there is one at all, is the

writ of *habeas corpus*. The law provides no other mode of release from wrongful, or alleged wrongful imprisonment.

But the Federal Courts could not grant a writ of *habeas corpus* in such a case.

In ex parte Cabrera, the petitioner was Secretary of the Spanish legation, and had been arrested and imprisoned under the authoity of Pennsylvania, for forgery. He was brought before the Circuit Court of the United States on a writ of *habeas corpus*. The Court conceded his exemption, but held itself incompetent to discharge him. and that he must seek redress in the State Courts. 1 Wash. C. C. R. 232.

In Taylor's Administrators vs. Carryl, 24 How. 583, this Court in defining the line of division between the jurisdiction of the Federal and State Courts, says:

"The legislation of Congress in organizing the judicial powers "of the United States, exhibits much circumspection, in avoiding "occasions for placing the tribunals of the States and the Union "in collision. A limited number of cases exists, in which a party "sued in a State Court may obtain the transfer of the cause to a "Court of the United States by an application to the State Court "in which it was commenced;" and this Court, in a few well defined cases, by the 25th section of the Judiciary Act of 1789, may revise the judgment of the tribunal of last resort of a State. In all other respects the tribunals of the States and the Union are independent of one another. The Courts of the United States cannot issue an injunction to stay proceedings in any State Court, and the Judiciary Act provides that "writs of *habeas corpus* shall in no case extend to prisoners in jail, unless where they are in custody under or by color of authority of the United States, or are necessary to be brought into Court to testify. "Thus as the law now stands," say this Court, "an individual "who may be indicted in a Circuit Court for treason against the

"United States, is beyond the power of the Federal Courts and "Judges, if he be in custody under the authority of a State. *Ex* "*parte* Doer, 3 How. 103. And signal instances are reported in "verification of the above statement. Ex *parte* Robison, 6 Mc- "Clean R. 335."

The act of 1833, Sec. 7, was not designed to remove any of these landmarks, or to take away any of the immunities of the States, but was only intended to guard against the unwarranted assumptions and usurpations of the States in attempting to obstruct the Federal officers, and those assisting them, in executing the laws of the United States and the process of the Federal Courts. This act was called the "Force Bill." It was passed to meet the attitude of South Carolina on the tariff question. The occasion shows its purpose, namely: to protect Federal officers and those assisting them in the execution of the laws of the United States. See Hurd on Habeas Corpus, page 155, and the cases there discussed.

On *habeas corpus* the Court cannot look behind the sentence of a Court of competent jurisdiction. 3 McClean, 89; 3 Peters, 193. A commitment for contempt is such a sentence. *Ex parte* Kearney, 7 Wh. 38.

The proposition that a peremptory mandamus should not be awarded against a ministerial officer commanding him to disobey the order or decree of a Court having personal jurisdiction over him, and over the subject matter of such order or decree, is not only supported by sound reason, but also by uniform authority. The counsel, while erroneously saying that but two cases are cited in support of the proposition, himself fails to produce a single case or *dictum* in conflict with it. There are none such. This itself is a strong presumption in favor of the proposition.

The case of the Ohio and Indiana Railroad Company vs. the Commissioners of Wyandotte County, 7 Ohio State Reports, 278,

was a proceeding in mandamus to compel the Commissioners to make a subscription to the stock of the Railroad Company. The defense was that the Commissioners had been absolutely and perpetually enjoined from making such subscription, by final decree of the Supreme Court of Ohio, at the suit of John Carey and other tax payers of the said county. The Court held this a good defense and refused the writ.

The counsel in vain attempts to point out any material distinction between the case cited and the present case. He says that the Ohio case "was the *first* suit brought as an original remedy," and—by implication—that this case is the second brought by the relator. It is not perceived how this can make any difference. The counsel fail to show it. And the reason given by the Court for their refusal to grant the writ, would apply without regard to the alleged distinction. The reason given by the Court was, that it was inadmissable and unjust to place the Commissioners, who were not to blame, between two fires, by subjecting them to contradictory orders.

Again: The counsel says that in the Ohio case "the injunction forbade *verbatim et literatim*, the thing asked for by the mandamus," and the suggestion is, that in this case, the injunction forbids the levy of a tax to pay the coupons, while the mandamus asks for the levy of a tax to pay the *judgment* recovered on the coupons. It is not necessary to consume space in showing that this distinction is gratuitous, and rests on no ground of sound reason. It is sufficient to call attention to the fact, which the record discloses, that the injunction was ordered *even before the commencement of the suit in which relator's judgment was obtained;* and that the decree making the injunction perpetual was rendered more than a year prior to the judgment on the coupons. The relator's claim existed in the shape of interest coupons, until long after the consummation of the injunction suit; and the fact

that it has since passed into the shape of a judgment does not relieve it from the effect of the injunction.

Besides, such a distinction would ruin the relator's case; for, on the ground of such a distinction, it would be pertinent to say that these respondents are not authorized or required by the ordinances of the city of Keokuk, or statutes of Iowa, which relator sets out in his petition, to levy a tax to pay any *judgment;* but, at best, only to pay railroad bonds and coupons.

It is true that the case cited was decided by only three of the five Judges; but the other two did not dissent, but being of counsel in matters connected with the case, did not sit in its hearing.

Again: The counsel says that the Ohio case differs from this, because in that case the decree for the injunction and the proceeding for the mandamus, were both in the same Court. But this distinction only strengthens the authority of the case for respondents. No consideration of avoiding injurious collision with the authority of another and independent Court could be urged in the Ohio case as can be in this case; but the writ was refused alone on the ground of justice due to the Commissioners. And this consideration is stronger in a case like the present, where the two contradictory writs are from different and independent Courts.

It will be observed that in the case cited the Ohio and Indiana Railroad Company was not a party to the injunction suit; and the Court say that the decree in the injunction suit, therefore, did not bind or conclude the Company by any of its findings; but that, nevertheless, it did have the effect, while it remained in force, to preclude the Company from having the peculiar remedy sought by the proceeding in mandamus. The counsel think that this is consistent.

A person is not bound or concluded by a judgment or decree,

unless the Court rendering the same had personal jurisdiction over him. The finding of such a judgment or decree cannot be plead against him, as *res adjudicata*. But he may, nevertheless, be indirectly affected by it, if he is in any way dependent, for a peculiar remedy which he may seek, upon the action of those who are bound by the decree, and that action is forbidden by the decree. The point is—not that the relator is bound by the decree, but that the respondents are bound by it, because the Court had personal jurisdiction over them. A party's remedy may be, and often is, indirectly affected by orders and decrees made by a Court which has no personal jurisdiction over him.

Thus in Peale vs. Phipps, 14 How. 372, Phipps and Bowers were not parties to the suit in the State Court, and yet that suit had the effect to preclude their execution from being levied on any of the assets of the Agricultural Bank, and obliged them, if they wished to reach any of the assets of their debtor, to go into the State Court.

In Freeman vs. Howe *et al.*, 24 How. 451, suitors in the State Court were precluded in the same way, by a suit in the Federal Court to which they were not parties, and compelled to seek their remedy in the Federal Court.

Ex parte Fleming, 4 Hill 581, is a case directly in point, and like the present involves the question of the jurisdiction of two independent Courts. Justice Cowen held that it was not for him to inquire whether the injunction was properly issued or not; it was enough for him to know that the Judge of the District Court of the United States has the power to issue and enforce the process of injunction like any other Chancellor—if there was a wrong in granting the injunction the remedy was in the District Court of the United States. So in this case: if there was a wrong in ordering the injunction, the remedy is in the Courts of Iowa. And the fact that the relator has no confidence in the

State Court, and that the Supreme Court of Iowa and the Supreme Court of the United States do not agree, does not alter the law. Justice Cowen's decision was the recognition of a comprehensive rule of law, founded not on comity, but necessity, to prevent injurious collisions between independent Courts, and to avoid the injustice of subjecting officers and citizens to conflicting jurisdictions.

We admit, that in this country the authority to issue the writ of mandamus does not exist as a pregrogative power of the Courts, but is derived by grant from the government through constitutions and enactments; but when the power to issue it is granted, the exercise of that power is to be governed by the common law rules. It so far partakes of the nature of a prerogative writ, that the Courts may withhold it, and should do so, if the issuing of it would be attended with hardship and injustice. Moses on Mandamus, 19 and 20; 9 Peters, 571; 5 Gilman, 243; 25 Barb., 216, and 29 Barb., 96.

The writ will not be granted against a person or officer who obeys a power which he is unable to resist. Or when it would subject those executing it to an action. Tapping on Mandamus, page 69, and cases there cited.

This Court cannot deliberately say, that respondents are in default, for obeying the injunction of the State Court. They have only obeyed a power which they could not resist. And unless this Court can remove that power out of the way, it has no right to compel respondents to incur the penalty of resisting it, even though relator's judgment may remain unpaid. It will not be the first time that the just jurisdiction of a State Court has legitimately precluded the collection of a judgment in a Federal Court. The United States Marshal cannot seize on execution property in the custody of a State Court, even though the defendant in execution may have no other property. Neither can these respon-

dents raise a fund for the payment of relator's judgment, by levying a tax on the property of the citizens of Keokuk, as long as the writ of the State Court forbids them to do so, and protects that property from such taxation.

All the difficulties and apparent conflict of jurisdictions, which surround the case, admit of an easy and obvious solution. It requires only the application of a familiar and comprehensive principle universally recognized by Courts of justice, viz: that between Courts of concurrent jurisdiction, the Court which first obtains jurisdiction over the subject matter or controversy, shall retain it, without interference or interruption from the co-ordinate Court. This rule is not founded on comity, but necessity. It is absolutely essential to the harmony of a complicated system like ours, composed as it is of State and Federal Courts, exercising, in many matters, concurrent jurisdiction over the same citizens, and co-extensive with the United States. It is just and equal to both jurisdictions, and prevents all injurious collisions between them. It opposes no obstruction to the efficient administration of justice. It denies to no party any remedy to which he is entitled, but directs him in what Court he must seek it. It does not regard one Court as fallible and the other infallible, but recognizing the possibility that Courts may err as well as differ, it does not require the citizen or officer to obey the conflicting orders of two equal and independent tribunals at the same time, with the certain liability to a process for contempt in one or the other.

This rule is not controverted by the relator's counsel. It is recognized in the following cases: Smith vs. McIver, 7 Wheaton, 532; Hagan vs. Lucas, 10 Peters, 400; Peale vs. Phipps, 14 How. 372; Peck vs. Jenniss, 7 Howard, 618; Taylor *et al.* vs. Carryl, 20 How., 583, (in the opinion of the Court, and also in the dissenting opinion); Freeman vs. Howe *et al.*, 24 How., 450; *Ex parte* Cabrera, 1 Wash. C. C. R., 932; and *Ex parte* Doerr, 3 How. 103; also *Ex parte* Fleming, 4 Hill.

If the application of this rule will not solve the difficulties which surround this case, and harmonize the conflicts which it threatens, then the case admits of no rational solution, and our judicial system must be left to the reproach of furnishing no rule to prevent the antagonism and collision of independent and concurrent jurisdictions, and to decide which the citizen shall obey. But there is no such defect. The rule stated solves all difficulty, prevents all collision, and leaves the duty of the citizen plain. It is founded on necessity, and approved by experience. It is an absurdity in physical science, to say that two bodies can occupy the same space at the same time. It is no less an absurdity in legal science to say that two equal and independent Courts can actually exercise jurisdiction over the same subject matter, or over the same person in regard to the same matter, at the same time.

It is an obvious inference from the nature of the rule, that it practically operates as a limitation on the jurisdiction and powers of both co-ordinate Courts. Each co-ordinate Court is often precluded from the exercise of powers which clearly lie within the scope of its concurrent jurisdiction; for these powers are all subject to the limitation that they must be exercised so as not to interfere with the just jurisdiction of the co-ordinate Court. The cases of *Ex parte* Fleming, 4 Hill, 581; *Ex parte* Doer, 3 How. 103; Taylor *et al* vs. Carryl, 24 How. 583; Freeman vs. Howe *et al.*, 24 How. 450, are all illustrations of this principle. Every Court unquestionably has jurisdiction to enfoece its own judgments by execution; yet in Peale vs. Phipps, 14 How., 372, the Federal Court was precluded from levying its execution on any portion of the defendant's property, because his property was all in the custody of a receiver of a State Court. And although the plaintiff in that case, not being a citizen of Mississippi, had a right to sue in the Federal Court, yet the practical operation of the rule on which we are insisting, left him no remedy except in the State Courts. And the rule would still have held good even

if the plaintiff's claim in that case had consisted of railroad bonds, and the Courts of Mississippi had held such bonds invalid. Hence we contend that all that the counsel says in regard to the right of the relator to have his remedy in the Federal Court, and his right to have the payment of his judgment enforced by that Court, and in regard to the powers of that Court to issue the writ of mandamus is not pertinent to the defense set up by respondents—or at least not conclusive, unless he can further show, that all this can be done without encroaching on the just jurisdiction of the Courts of Iowa.

Now let us examine what that jurisdiction of the Courts of Iowa was, and when it attached.

The purpose of an injunction is to prevent injury, not to compensate it. It sometimes happens that a City Council, under color of State laws and ordinances, undertakes to levy an illegal tax. This would be a wrong to the tax-payers, and as the law provides a remedy for every wrong, there must be a remedy for this one. The only adequate remedy which they can have, is to apply to the State Court, which has jurisdiction over the property to protect it from illegal taxation, and also over those who are about to levy the tax, and also to construe the statutes under color of which the tax is to be levied, and pray the Court to enjoin the tax. Nor is it necessary in a suit to enjoin, to make the beneficiaries of the tax parties; for they may be uncertain, or unknown, or beyond the jurisdiction of the Court—as the counsel tries to show that the relator is in this case. It would be unjust that this should deprive the tax-payers of all remedy to prevent an illegal tax from being levied on their property. It is enough that those who are about to levy the tax are within the jurisdiction of the Court, and would be bound by its decree. But the tax-payers would have the right to bring such a suit whether the tax was legal or not, for they would have the right to submit that

very question to the decision of the Court, and that decision would bind the parties until it was reversed.

It was just such a case that was presented to the District Court of Lee county against these respondents. The object of that suit was to enjoin a tax which respondents were about to levy and collect under color of authority conferred on them by the laws of Iowa. If that object was not within the legitimate jurisdiction of the State Court, then it follows, that a State Court has no power to pass on the legality of a tax about to be levied under color of authority by that State, and by officers created by that State, and upon property within the limits of that State.

The object of the injunction suit in the State Court was not the cancellation of the railroad bonds. The cancellation of a written obligation in the hands of its owner, is a very different thing in law, from the inhibition of third parties from raising money in a certain way for the payment of that obligation. They may involve the same questions, and may practically produce the same result; but that does not make them identical in any legal sense. The question of the legality of a tax does not necessarily, but may, involve the legality of the purpose for which it is to be levied. The jurisdiction to try the legality of the tax includes the power of the Court to examine and decide every question on which the validity of the tax may depend; but the subject of the suit is still the legality of the tax, no matter on what ground it may be decided. The object of the injunction suit is shown by the relief which is prayed for and granted, and not the ground on which it is asked for and given. That which is actually done by the Court, is shown, not by what the decree finds, but by what it orders. The State Court did not undertake to cancel the bonds. That was not the legal effect of its decree. It did pass upon the question of the validity of the bonds, because that question was involved in the question of the validity of the tax

which it was asked to enjoin. In the legitimate exercise of its legitimate jurisdiction, and of its honest and best judgment, it held the tax, which it found that these respondents were about to levy, to be illegal, and enjoined it. This decision is not on trial, by appeal, before this Court, and, therefore, the discussion of its merits is not pertinent to this case. It is enough to say, that the Court of Iowa had the authority to make it, and to bind respondents by it.

The injunction suit was brought by the proper parties, and against the proper parties. The petitioners were seven tax-payers and owners of property in Keokuk, who sued for themselves and other citizens and tax-payers of Keokuk too numerous to be joined in the suit. The laws of Iowa expressly authorize this form of instituting such a suit. Revision of 1860, Section 2763. Their property was threatened with the levy of a tax which they claimed was illegal. They had the right to present the question of the legality of the tax to the State Court, and to invoke its protection against the alleged injury which was threatened. Their petition submitted a proper case to the decision of the State Court, and legitimately called into exercise the legitimate jurisdiction of that Court.

These respondents were the proper parties defendant to that suit, because they were the parties threatening to do the act which was complained of as an injury, and they alone had to be enjoined in order to prevent it. If a Court cannot try the legality of a tax and enjoin it, without first obtaining personal jurisdiction over all who are interested in having it levied, it would often happen that there would be no tribunal to try the legality of a tax, or to enjoin it, even though clearly and unquestionably illegal. It is true that the relator was not a party to the injunction suit, and, therefore, the decree in that suit does not bind or conclude him—the matter is not *res adjudicata* as to him. For example, if he should hereafter sue on his bonds—*even in the Courts of*

Iowa—that decree would not sustain as against him the plea of *res adjudicata.* But that decree, nevertheless, does have the effect to preclude him from having the particular remedy which he seeks in this case. First, because that decree effectually ties the hands of the respondents, and effectually prevents them from levying the tax; and, second, because it interposes the jurisdiction of the State Court between this Court and the respondents in regard to the levying the tax. If this proceeding had been consummated by the service of the peremptory writ of mandamus on these respondents, and the tax-payers had then commenced a suit to enjoin respondents from levying the tax, the respondents could have then set up the mandate and jurisdiction of this Court as a good defense to such injunction suit, in the same way in which they now set up the injunction and jurisdiction of the State Court as a defense to this suit. And it would not invalidate such a defense because the petitioners in such injunction suit had not been parties to the proceeding in mandamus.

The defense in this case, is not that the matter of controversy is *res adjudicata;* but it is, that in regard to the very subject matter of this suit, these Respondents have been subjected to, and are bound by, the adjudication of another and independent court. The purpose of this proceeding is, to have this Court exercise jurisdiction over the Respondents in regard to a certain subject matter, viz: The levying of a tax. And the answer is, that the State Court had obtained jurisdiction over Respondents, and had absolutely bound them by its decree in regard to this same identical subject matter; and that this jurisdiction of the State Court had not only been obtained, but consummated, before the institution of this present suit; and that, therefore, the Federal Court is precluded from exercising any jurisdiction over Respondents in the matter of levying the tax. This defence rests on no novel principle. It involves more than the collection of a tax. It involves the harmony and perfection of our judicial system. It is

no attempt to deprive the Federal Courts of any legitimate jurisdiction. The Federal Courts have a jurisdiction which is exclusive. No action of any State Court can affect that exclusive jurisdiction. So, the State Courts have an exclusive jurisdiction which cannot be affected by any action of a Federal Court. But on that middle ground where their jurisdictions overlap, there is no principle to prevent the shock of unseemly and injurious collisions, except the one which we are endeavoring to assert by this defense.

The allegations of the petition for the writ of mandamus in this case, and of Respondents' return to the alternative writ—which latter are admitted by the Relator's demurrer—show that the writ of injunction in State Court, against Respondents to enforce the this tax, was commenced before the suit on which Relator recovered judgment on his coupons. This suit, therefore, does not involve the point; whether the jurisdiction of the Federal Court over the subject matter and Respondents in this suit dates from the commencement of this suit of mandamus, or runs back to the commencement of the suit on which Relator recovered judgment on his coupons. Even if that question did arise, in this case, we know that other cases, directly involving this point, precede this one on the docket of this Court, in which this point will be argued by able counsel. And, as it is necessary to forward this argument at once, it is closed here, and respectfully submitted.

J. H. CRAIG,

Attorney for Respondents.

KEOKUK, IOWA, March 29, 1867.



IOWA.

[illegible]

[illegible] SENATOR.

[illegible]

[illegible] Kansas, Iowa.

[illegible] Kansas, Iowa.

☞By an arrangement of Counsel representing the Relators in the cases, in the U. S. Supreme Court, No. .... State, ex-rel. Riggs *vs.* Supervisor Johnson county, and No. 245, State ex-rel. Thomson *vs.* Supervisor Henry county, the Briefs of both Attorneys are submitted in each case, the cases themselves being similar.

NOTE BENE.—No. 246, U. S. ex-rel Moses *vs.* Keokuk, Iowa, has been settled, and the bonds taken up by defendents.

In No 247, U. S. ex-rel. Thomson *vs.* City Council, Keokuk, the principles involved are precisely the same, as in U. S. ex-rel. Thomson *vs.* Supervisor Henry county, and the same character of defense relied upon, and it was not thought necessary to print a separate argument, although the facts are a little different.

SUPREME COURT

OF THE

UNITED STATES.

UNITED STATES *ex-rel.* J. EDGAR THOMSON, *Plaintiff in Error,*

vs.

BOARD SUPERVISORS, HENRY COUNTY, *Defendants in Error.*

NO. 245, DECEMBER TERM, 1866.

BRIEF AND ARGUMENT IN THE CAUSE

BY

H. SCOTT HOWELL, ATTORNEY FOR RELATOR.

THIS is a proceeding by mandamus, brought by the relator to compel the respondents to levy a tax to pay two certain judgments obtained by relator against Henry county, Iowa, in the Circuit Court of the United States, for Iowa, upon the coupons of certain Railroad bonds, issued by said county, in payment of her subscription to the capital stock of the Keokuk, Mount Pleasant & Muscatine Railroad Company.

The issue is joined by the demurrer of the relator, to answer or return of the respondents upon the alternative writ of

mandamus; and just one point is presented—one single answer given—why the peremptory writ should not issue; and that is, that the respondents have been enjoined by the State Court of Iowa from doing what relator seeks to have them perform.

I.

THE FACTS

Disclosed by the pleadings are, that the people of Henry county, Iowa, at a special election held for that purpose, on the first Monday of January, 1855, authorized the issue of one hundred thousand dollars, in the bonds of said county, and, at the same time, and by the same vote, authorized the levy and collection of an annual tax to pay the principal and interest of said bonds; that, under the general law of Iowa, and, by virtue of such authority, said bonds were afterwards issued, dated 1st of January, 1857, drawing eight per cent. annual interest, running twenty years, and all made payable to bearer; that relator bought a large number of said bonds and coupons, for value in the market, before their maturity, and after the Supreme Court of Iowa had determined the validity of same or similar bonds; that relator, at the October term, 1864, of the Circuit Court of the United States for Iowa, recovered two judgments upon past due coupons, which still remain unpaid; that due demand had been made by relator upon the Board of Supervisors of Henry county, upon whom such duty devolved by law to levy a tax to pay said judgments, which they, by a resolution of their Board, had refused to do; and, thereupon, relator instituted this proceeding to compel them to perform.

Respondents, in their answer, admit the election held—the issue of the bonds—that the judgments were obtained, which

remain unpaid, and the demand to levy the tax; but set up the fact that certain tax-payers of Henry county had filed a bill in the District Court of Henry County, Iowa, against respondents, enjoining them from levying a tax to pay any of said Railroad Bonds or Coupons, and that relator was also made a defendant in said suit; but for what purpose, or what relief was asked as against him on said bill, respondents' answer herein does not disclose.

It also appears that a preliminary injunction was allowed and endorsed upon said petition by a Judge of the Supreme Court of Iowa, sitting at chambers, the bill then filed in the District Court, the writ of injunction issued, which was duly served upon the respondents; but there is no allegation same was ever served upon the relator herein.

The petitions in each suit—one for mandamus in the Federal Court, and one for injunction in the State Court—were filed on the same day, the 20th January, 1865.

The relator demurred to the showing, as made by the respondents, because the facts stated therein were not sufficient in law to constitute a defense against the relief sought by the relator.

ARGUMENT AND AUTHORITIES.

In the outset, we contend that, although the name of J. Edgar Thomson appeared in the petition for the injunction, and perhaps, also in the writ, that he was never properly brought before the State Court, and its decree or order is in no way binding upon relator herein.

It is not alleged he was ever served with notice, or that he entered an appearance in said suit. Being a non-resident of

Iowa, as his status in the Federal judgments show, the presumption of law is, he could not have been, and was not served *personally* with notice.

An injunction suit, being strictly a personal action, he could not be served by publication, else one might be held and punished as for a contempt of an order of Court, of which he might not have had the slightest knowledge.

Service by publication is a matter purely statutory, and this is not one of the cases wherein it is allowed in Iowa,(see section 2,831, Revision of 1860). The only paragraph of that section in which the right of making such publication might possibly be considered as having been given, is number six, which reads thus:

"6. In actions which relate to, or the subject of which is real "or personal property in this State, when any defendant has or "claims to have a lien or interest, actual or contingent therein, "or the relief demanded consists wholly or partly in excluding "him from any interest therein, and such defendant is a non-"resident of the State or a foreign corporation."

But the "personal property" here spoken of must mean a specific property having identity; a thing *in esse*, goods, merchandise and the like; such property as usually requires the immediate care and supervision of the owner, or his agent, at the place where same is. It will also be noticed that it is the property of the *defendant*, or in which he has an interest. Now, under the laws of Iowa, a tax not levied, can, in no sense, be considered the property of a bondholder. It must be a tax *collected by the county* in which he would have such an interest. Till then it does not become the property of the county. While in the pocket of the tax-payer, it is his property, and his alone,

and cannot be "*levied upon.*" The bondholder must get at it in some other way. The last part of section 3,274, Revision of Iowa of 1860, all of which is quoted *post*, reads as follows:

"The property of a private citizen, *can in no case, be levied* "*upon* to pay the debt of a civil corporation."

But more: The statute requires all such personal property to be "in this State" (Iowa). But where is the evidence, or allegation, even, that either the bonds or bondholders in the case under consideration, were in the State of Iowa, much less within the limited jurisdiction of the District Court of Henry County?

Again: No relief appears to have been asked for as against the said Thomson. The Board of Supervisors were indeed "enjoined and commanded to desist altogether from levying, or "causing to be levied, any tax for the purpose of paying either "principal or interest of the coupons mentioned in the plain- "tiff's petition," and such was the nature of the bill. Hence, we submit the relator is, in no way, estopped or embarrassed in his present action by the injunction suit in the State Court, and we may argue this case as though he had not been made a party thereto. As he did not enter any appearance, was not served personally, and could not have been properly served by publication; and as said suit was not an action *in rem* the proceedings of the State Court do not estop the relator in the prosecution of any right, or in the pursuit of any remedy provided by law for the collection of his judgment in the Federal Court.

"Judgments bind only parties properly before the Court, and "their privies." Such has always been the law. Says Marshall, C. J., in *The Mary*, 9 Cranch, 144, "it is a principle of

"natural justice, of universal obligation, that before the right "of an individual be barred by a judicial sentence, he should "have notice, either expressed or implied, of the proceeding "against him."

II.

What, then, are the rights of the relator herein? what the proper and lawful mode of enforcing such rights, and who can intervene to stay their enforcement?

His FIRST right was a judgment against the county on the coupons. This the Circuit Court has determined by its judgment fixing and establishing the validity of the bonds, and no Court but this, appellate, Court can change it. Even the respondents, in their extraordinary petition for injunction, do not directly seek to cancel or reverse the relator's judgments in the Federal Court.

Now, this right of judgment is founded upon the contract of the county, made by her proper officers, to pay her bonds. What follows? In all ordinary cases an execution for the collection of the judgment. But such is not the process, or not the only process, when the instrument makes additional provision for another. Pre-eminently is this true in the present instance. Because the same statute which provides a writ of execution for the collection of a judgment against another defendant, by a levy upon his property, in case of a county in Iowa, exempts her public property from seizure and levy on executions.

Section 3,274, Revision of 1860, provides: "Public build- "ings owned by the State, or *any county*, city, school district, "or other civil corporation, and any other *public property* which

"is necessary and proper for carrying out the general purpose for "which any such corporation is organized, *are exempt from exe-* "*cution*. The property of a private citizen can, in no case, be "levied upon to pay the debt of a civil corporation."

Now, the "public buildings" and "other public property," embracing a poor house of a county, and taxes collected, constitute all, or the great bulk of the property of a county in Iowa.

But even if this were not so, if the "public property" could be "levied upon" and sold "on execution," that would constitute no reason for withholding the writ of mandamus. In *Commissioners of Knox County vs. Aspinwall*, 24 Howard, 383-4, the Court say: "Assuming that the general law of "Indiana permits the public property of the county to be levied "upon and sold for the ordinary indebtedness of the county, it is "clear the bonds and coupons issued under the special proceedings "of this act were not left to this uncertain and insufficient remedy. "This act provides a specific fund for the payment of these obli- "gations, on the faith and credit of which they were negotiated. "It is especially incorporated into the contracts that this corpora- "tion shall assess a tax for the special purpose of paying the in- "terest on these coupons. If the commissioners either neglect or "refuse to perform this plain duty imposed on them by law, the "*only remedy* which the injured party can have for such refusal "or neglect is the writ of mandamus."

Surely, then, the creditor of a county in Iowa must have some further right—some other mode of redress—some other remedy.

He has, and both that right, and the manner of enforcing same, is, we contend, also *a matter of contract*, found on the very instrument executed by the county upon which the judg-

ments were rendered. The people of Henry county, at the same election, and by the same vote which authorized the execution and issue of her Railroad Bonds, also voted to levy, or have the proper county authorities levy upon them, an annual tax to pay said bonds and interest. This contract is recited on the face and made a part of every bond the county issued, and thereon she also pledges the "good faith" of the people to see it performed.

The purchaser of such bonds does not have to depend merely upon the remedy as supplied by the general law of the land, as interpreted or administered by the Courts of the State at the time he buys, which may change with a change of the judiciary; *but he can, with these bonds in his hands, rely with unfaltering confidence, upon the contract they make—the validity of which no Court, Federal or State, can abrogate or impair.*

And just here is where we think the Judges of the Circuit Court failed to appreciate the case. They gave us judgments on the coupons, *ex-necessitate*, as of right; but they refuse us the writ of mandamus, forsooth that is an extraordinary "remedy," and the granting of it enjoined by a Court of concurrent jurisdiction! As well might the State Court attempt to cancel or or annul the judgments of the Federal Court. What has the judgment to support it but the contract of the parties to pay the bonds? And the same paper, as a part of the same transaction, contains the agreement to levy the tax.

This must have been the sole, or controlling consideration, inducing a purchaser to buy the bond as a thing of value. For it, he parts with, and for it the county receives, his money. And yet when, with his money in her coffers, and he with her "sol-

emn promises" in his hands, which the county not only fails to redeem, but dishonestly repudiates, the purchaser comes to any State Court, and asks redress, he is told he has no rights which they can, or are bound to, respect! He goes to the Federal Court, still seeking Justice in her Temple. Here he is entertained at first. The Court gives him a judgment on his bond, and he is encouraged. But, when he asks that that judgment may be made effective, in the very manner provided for in the bond; when he asks an adjudication of *his full rights of contract*, he is turned away with an empty cup, and the fruits of his expectation suddenly become the ashes of disappointment!

But authority is not wanting in Iowa Courts, for the refutation of such a position. In *State ex-rel. Clark, Dodge & Co., vs. City of Davenport*, 12 Iowa, 741, the Court having decided, in a similar case, that having given plaintiff a judgment, he was entitled to "the payment of his debt." Not only did the Court go through with the idle ceremony of doing a vain thing, but awarded him a writ of mandamus to make that judgment effective.

The opinion in this case (which represents a full bench) is prepared by the same Judge who all along, in the judicial decisions of that Court, has held that municipal bonds, issued for railroad purposes, to be invalid. So in *State ex-rel. Dox vs. County Judge of Johnson Co., et al.*, 12 Iowa, 237, at page 245, the same Judge, representing the same full bench, says: "While he "has never concurred in the view which sustains the power of the "counties to issue such bonds, yet he may be permitted to say, "in this connection, that, as long as the power is recognized and "upheld, he believes that public policy and good faith (and he "may as well have said *good law*) alike demand that the in- "debtedness should be properly and regularly met, *according to*

"*the terms and specifications of the contract.* So long as "the validity of the bonds is recognized, neither the agents of "the counties, nor the Courts should countenance any action or "proceeding which would tend to mitigate against the strict and "full legal rights of the holder."

The opinion not only upholds the right of mandamus which was awarded in the case, upon the ground that it was a duty required of the respondent incident to his office required by public policy, and the general law of the land; but, he adds: "Not "only so, *but, by the terms of the contract between the hold-* "*ers of the bonds and the county*, the faith of the county "was pledged *to the levy of a tax* to meet the accruing inter- "est and finally to liquidate the entire indebtedness."

So, our deduction from what has been said, is, that the SECOND GREAT RIGHT *of the relator is, to have his judgment paid by the levy of a tax.*

It is co-equal and co-extensive with the first. So long "as the validity of the bonds is recognized," so long has he his right "to the levy of a tax," both under the statute law and his contract bonds.

It must be admitted whatever impairs the obligations of the contract, whether a statutory enactment or judicial decision, is not to be regarded as law. To deny the relator in this case, a writ of mandamas, takes away from him his only remedy to collect his debt, and necessarily impairs the obligation. Taney, C. J., in *Bronson vs. Kinsie*, 1 Howard, 311, says: "The "remedy is the part of the municipal law which protects the "right, and the obligation by which it enforces and maintains it." In *Curran vs. State of Arkansas*, 15 Howard, 319, Curtis,

J., says: "But it by no means follows, because a law affects "only the remedy, that it does not impair the obligation of the "contract. * * * And, if the law is so changed that the "means of legally enforcing this duty are materially impaired, "the obligation of contract no longer remains the same."

And so we can say, with equal reason, if judicial constructions of an unchanged law, are so changed as to withhold the only effective remedy, certainly the obligation is impaired.

III.

But we are here met with the argument, that the validity of the bonds is no longer recognized by the Courts of Iowa—that they have reversed their former decisions, and now hold said bonds to be null and void. Of course, while holding to this modern doctrine—the repudiation of "solemn contracts," supported by the pledge of "*good faith*" of the people, we would not expect the State Courts of Iowa to grant us a mandamus.

But, happily for the bondholders, this Court, in well considered cases, *Gelpke vs. City of Dubuque*, 1 Wallace, 175; *Meyer vs. City of Muscatine*, *ibid.*, 384, and *J. Edgar Thomson vs. Lee County*, at December term, 1865, does not subscribe to this, as being the *leges legum*. And if we can not depend on this Court of last resort for the annunciation of both a better law, and the enforcement of the same, then certainly *nusquam tuta fides*.

Already has this and the lower Federal Courts determined the bonds are valid, and given judgments upon them, both before and since the Supreme Court of Iowa, has decided differently.

Here we have had given us half of our rights, and as justice is not meted out by halves, the other half must follow, without which the former is nothing.

But "there is a conflict," and this is the great *in terrorum argumentum*. Yet, to present this—the fact that there is a conflict—a difference of opinion, between the State and Federal Courts, as a reason why justice should be withheld, is to ignobly shrink from the contest, and tamely to submit to wrong. The termination of the great rebellion informs us how the executive department of our nation considered such an issue—it remains to be seen how the judicial department will grapple with it.

If there can be no flank movement, if this question can not be decided without a direct opposition to the State Courts of Iowa, on the single ground that one Court holds said bonds to be valid. and the other invalid, then we say that, at least so far as suitors, entitled to sue in the Federal Courts are concerned, they must be protected in their vested rights, by the power of this Court and of the Government.

The question is an important one. Millions of treasure, and, a thing still more valuable, an underlying principle of right, depend upon the issue.

Are the bonds valid? is the question. For twelve years the Supreme Court of Iowa said, yes. For twelve years that Court uniformly gave judgments upon them, and awarded writs of mandamus in addition to the usual *fi. fa.* to enforce their collection. This gave them value in the money market of the East where there they were sold, and still are owned. But for the last four years, this same Court has held to a different ruling, and not content with withholding its aid to the purchaser, which

Wright J. said, the "contract" and "public policy" required should be given, now seeks to forestall and enjoin the acts of all other Courts in the premises.

On the other hand, the Federal Courts, both before and since the Supreme Court of Iowa has "changed front," affirm their validity. The United States Circuit gave relator his judgments long since the decision of *State ex-rel. Burlington & Missouri River Railroad vs. County of Wapello* was decided (in 1862).

Let respondents disguise it as they may, it is not a question of practice—the changing of a rule of construction—or the withholding of a "discretionary writ;" but, in fact, *it is the establishment of a civil right, and the enforcement of a specific contract between citizens of different States which is to be determined here.*

The right to have the tax levied, is to the right judgment as substance to shadow. Without this, the other is a vain thing—a mockery—for, practically, there is no other way the judgment can be collected. I anticipate the reply the respondents will make here, that there are many judgments which cannot be collected. And this is true, as where rights have been barred by the statute of limitations, where the defendants have become insolvent and other like causes; but all these involve the inability of the defendant to pay, or the laches of the plaintiff in collection. Here no such reason applies. The county pays not, not because of inability, but indisposition. As a municipal corporation, the county cannot be insolvent, at least, till the taxing power, vested in her officials, has been exhausted. No "statute of repose" cuts off plaintiff's cause of action.

IV.

In further replication to respondents' return, we say *the proceedings in the injunction suit constitute no bar to our right of mandamus, for want of jurisdiction by the State Court;* and, if we show this, then there cannot be said to exist a conflict between State and Federal Courts, for what the State Court had not before it, it could not have decided.

What was the real subject matter of the injunction suit, *but the validity of the bonds?* Never before had Henry County bonds been declared illegal, or any relief against them granted upon this ground. It is true as a sequel of this ruling, the Court enjoined the collection of the money to pay them, but the predicate of such ruling was solely the then adjudicated invalidity of the bonds.

But where were the bonds? Before the Court, or within its jurisdiction? Not one of them. There is no pretense that the parties enjoined—the Board of Supervisors—held any of them. Had the defense of the invalidity of the bonds been successfully made in the Federal Court, where the bonds and coupons were produced and filed, then it would have been *res adjudicata on the subject matter.* But there, although such a plea was put in, the defendants failed.

Would any respectable Court undertake to cancel, by its decree, a promissory note or written contract, without having the instrument, with its owner or holder before the Court? Or, if the subject matter of the suit was there, without its owner, could the Court frame a decree to destroy it, which should be

good against all the world? Who ever heard of such a suit as John Smith *vs.* a promissory note, or John Dox *vs.* a Henry County Railroad Bond?

If A sues B upon a promissory note, and B defends upon the ground that the note was void, because fraudulently obtained, the note itself constitutes the subject matter of the suit, and must be brought into Court. Without its production, A could not recover, even though the defense set up fails. Both the note, the maker and the holder must be before the Court, to secure its adjudication.

Nor, is the subject matter different, or the rule of law changed, if the parties are reversed? If, instead of a suit at law by A, upon the note, B brings an action in chancery to cancel the note upon the same ground of fraud, he must bring the party holding or owning the note before the Court; and, in doing this, he would give the Court jurisdiction of the subject matter, also, in the person of the holder. But, in the case under consideration, it is not shown that a single bondholder was made a party to the injunction suit, who was ever served with notice; while, if this Court could see the petition in said injunction suit, they would find it stated "the owners of a large number of said bonds were to petitioners unknown."

In the case cited above, where B brought his action to cancel the note, suppose he had only made a third party—an entire stranger to the note, and the transactions out of which the note grew—a defendant to the bill, would a decree rendered on that case bar A, the original payee, or his assigns, from a recovery on same? Certainly not, and that because of the familiar principle that he was not a party or a privy to the defendant in the bill. And, although the plaintiff may have produced his

proof, and satisfied the Court that the note was wrongfully obtained from him, through fraudulent means or without due consideration, could it be said that the *subject matter* was properly before the court, so as to estop others, without the party who owned or held the note was made a defendant to the bill? And again, we ask, could it be said that the manner of the collection of the note was the subject matter of the suit? whether or not an execution should be issued against the maker, was the question in the case? No, no! Back of all these was the foundation matter—the real question upon which all sequent things depended—and that was, the validity or invalidity of the note. The right of an execution, and the right of a judgment itself, hung upon this.

Consider the case at bar. Here we have certain parties not even the makers of the obligations, but those having an infinitesimal interest in resisting their payment, bringing their suit *against the makers of the bonds* and her agents, to relieve them from the payment of a hundred thousand of dollars of negotiable, negotiated and unmatured paper; and upon such a case we are asked to conclude the rights of the holders of that paper! Anomalous suit!

We read in the books, of suits being brought by a "next friend" *of the plaintiff*, but, here in this *novus petitio*, the plaintiff is the "next friend" *of the defendant*, to whose friendly antagonism the defendant should certainly be very much obliged. Any repudiating creditor, individual or municipal, might well court *such* litigation at the hands of such "friends" who pay their own counsel fees! Self-interest leads alike, plaintiff and defendant, to a common end. Both are residents of Henry County, and, perchance, tax-payers, and to the prayer of the one, the other responds with a prompt Amen! Shall such adjudication be upheld?

We hold that every court, in every state, must have a corpus, the body of a person or a thing, one or both to be affected by its solemn adjudication brought within its jurisdiction (see *Freeman vs. Howe*, 24 Howard, 454; *Taylor et al. Corryl*, 20 Howard, 599,) to make its judgment effective.

No judge will turn schoolmaster to instruct a jury upon abstract propositions of law, but will refuse all such instructions asked by counsel. So no court should pass upon the properties, nature or incidents of an instrument, unless that instrument, or the parties holding it, are brought into court.

Authorities are numerous, that a court must have acquired jurisdiction over *both* the subject matter and the parties to be affected, before its judgment will be considered law. Without this, there is no estoppel.

In *Judah vs. Stephenson*, 10 Iowa, 493, Lowe, C. J., in passing upon the validity of a transcript of a judgment of a court in Indiana, which was commenced by attachment, which transcript failed to show, clearly and affirmatively, personal service upon the defendant, or that any property was attached, although the usual publication in a newspaper was made, says:

"It follows that the court having obtained no jurisdiction "by personal service, or by attaching property, *that the pro-* "*ceeding was a nullity*," and he very properly excluded the record on that ground.

In *Shelly vs. Bacon*, 10 Howard, at page 69, the court say, that "A plea to the jurisdiction, to be effectual, must show that "the court had jurisdiction of the whole matter." And at page 68, "There is no principle better settled than that where two or "more tribunals have concurrent jurisdiction over the *same sub-* "*ject matter and the parties*, a suit commenced in any of

"them may be pleaded in abatement to an action for the same "cause in another."

It was held in *Bowers vs. the Irish Presbyterian Congregation*, 6 Bosworth, 245, a case just in point, that "The "court must have jurisdiction of both the persons, the parties "and the subject matter of the litigation, before it render a "binding judgment or decree."

Of the same tenor, are—

Stearns vs. Stearns, 16 Massachusetts, 171;
Bissell vs. Brigs, 9 Massachusetts, 462;
Smith vs. McIver, 9 Wheaton, 532;
State vs. Yarborough, 1 Hawks, 78;
Hall vs. Davies, 2 Aiken 381;

And it is the privilege and duty of the Federal Courts to determine the question of jurisdiction for themselves, and not to ask the State Courts when this exists, or when it shall terminate. In *Freeman vs. Howe*, 24 Howard, at page 459, which overrules (*Dunn vs. Clark*, 8 Peters, 1). We find it said: "We regard the question as settled, at least as early as 5. "*Cranch*, 115; *United States vs. Peters*, familiarly known as "the Olmstead case, and which is historical, that it belongs to "the Federal Courts to determine the question of their own "jurisdiction, the ultimate arbiter, the supreme judicial tribu- "nal of the nation, and which has been recently reaffirmed, "after the most careful and deliberate consideration, in the "opinion of the present Chief Justice, in the case of the *United* "*States vs. Booth*, 21. Howard, 506."

V.

If our view of the case, that the subject matter of the injunction suit was really the validity of the Henry County Bonds be

correct, it would seem a work of superaddition to go beyond it. But if the view of the respondents' counsel, that the subject matter of said suit was the levy of the tax to pay them is to be entertained—and if this court shall take the simple allegations of the respondents' answer, that relator was a party defendant to said bill, without a showing that he appeared, or was served or could have been served by publication, as sufficient evidence that relator was duly brought before said State Court—then it will be proper to inquire further, how far the proceedings therein taken would affect his right of mandamus in this.

In the FIRST place, it seems to us there is a defect in the answer, which is fatal to it, in that it does not disclose any action *of a Court*. It will be noted that, all that had been done in the injunction suit, when the defendants made their return, was the allowance of a preliminary injunction, by a Judge of the Supreme Bench—filing of the petition in the District Court of Henry County—the issuing of the writ of injunction, by the Clerk, and its service upon the respondents. No judgment of the District Court is pleaded, because, for aught that appears, none was ever had. No Judge of the Supreme Court of Iowa, nor that Court itself, has any original jurisdiction. And the allowance of the preliminary injunction, by the Chief Justice, sitting at chambers, which he had the right to do, amounted to simply nothing, until the petition had been *filed* in the lower (District) Court, the bond given, and a notice and writ issued. As a matter of fact, relator does not know what kind of a final decree, if any, has ever been rendered. But, it is fair to presume the petitioners got all they asked, and, if this be so, respondents possibly might be permitted to set up, by an amended return, the record of the same, and thus only delay the decision which it is so important should be rendered herein, at an early day;

and, we pass to further considerations arising under this view of the case:

SECOND—It is admitted, where two Courts have concurrent power, that, that Court which first acquires jurisdiction over the parties and subject matter, determines the rights of the litigants, and the other Court must withhold action in the premises.

Applying this elementary principle, we claim the Federal Court first obtained that jurisdiction, by reason of the judgments rendered therein, in favor of relator, which were long prior to the institution of the injunction suit; and that these constitute the basis of his right of a mandamus in said Court. But Miller, J, in another case—*State ex-rel. Riggs vs. Johnson County*—now pending in this Court, used this language: "If it is the duty of the County Supervisors to levy the tax to "pay these coupons; that duty can be enforced by mandamus, "before judgment, as well as after" (see printed opinion, with argument of respondents in this case, p. 28).

This, we think, is erroneous. A State Court, of general jurisdiction, might award a writ of mandamus before a judgment on such bonds, and, in some few cases, have afforded such a remedy:

Commonwealth vs. Pittsburg, 34. Penn. St., 496;

Maddox vs. Graham, 2. Metcalf, 56;

The People ex-rel. Belden vs. The Contracting Board, 27. New York, 378.

But we do not know of a case where a Federal Court has exercised such a power in the first instance, and before judgment. Neither Miller, J. or counsel for respondents, cite any.

The powers of the Circuit Court of the United States, to issue

a writ of mandamus, is derived from the 14. Section, Act of 1789, which reads: "That all the before-mentioned Courts of the "United States shall have power to issue writs of *seire facias*, "*habeas corpus*, and *other writs*, not specially provided for "by statute, *which may be necessary for the execution of* "*their respective jurisdictions*, and agreeable to the princi- "ples and usages of law."

The Supreme Court of the United States, in *McIntyre vs. Wood*, 7. Cranch, 504, say: "That the power of the Circuit "Courts of the United States, to issue a writ of mandamus, "is confined exclusively to those cases in which it may be neces- "sary to the exercise of their jurisdiction."

Herein, then, consists a reason why the jurisdiction of the Circuit Court, to grant a mandamus, should date back to the judgment. As the judgment must precede it, as it follows, when does it begin, if not at the rendition of the judgment? Certain it is, that the right to the writ of mandamus is incohate, when it becomes "necessary for the exercise of the jurisdiction "of the Court."

In the parallel case of *Knox County vs. Aspinwall*, 24. Howard, 376, the Court say: "The jurisdiction is not disputed, "and it is necessary to an efficient exercise of this jurisdiction "that the Court have authority to compel the exercise of a muni- "cipal duty by the corporation, which, by law, they are bound to "perform, and by the performing of which, alone, the plaintiff's "remedy may be effected."

In *Wayman vs. Southard*, 10. Wheaton, 1, it was held: "The jurisdiction of a Court is not exhausted by the rendition of "its judgment, but continues till that judgment shall be satisfied." If it "*continues*," from what time, if not from the date of the

judgment, and until paid? Note, particularly, that "it con- "tinues," after judgment, till satisfaction, as fully as before judgment from the date of the summons. It is not a dormant jurisdiction after judgment, nor does it need a new birth to give it efficacy and power. "It *continues*."

Again, in the *United States Bank vs. Halstead*, 10. Wheaton, 64, Thompson, J. says: "The suit does not terminate with "the judgment, and all proceedings, on execution, are proceed- "ings in the suit." If "all proceedings on execution," as the interrogation of the judgment debtor, by the sheriff holding said writ, the attachment of his property by garnishment in the hands of others, which are allowed by the laws and practice of many of the States, "are proceedings in the suit," all tending to the same end, the recovery of the debt, then, certainly a writ of mandamus is also a proper proceeding and remedy under the original judgment. It is, indeed, the real and only execution—the *modus operandi* in the enforcement of the payment of the debt.

The Aspinwall case, in Indiana, warrants this view, and establishes the principle, that, in a proper case made, a writ of mandamus as necessarily issues, as that an ordinary *fi. fa.* does upon a judgment against an individual.

But, we are told, it requires something more to get out a writ of mandamus than an execution — that to obtain a mandamus a petition must be filed, etc.—so we file a precipe for an execution. The length and form may be different, but each is a statement of his judgment, and a prayer, or request, of the plaintiff, for the executive process of the Court to issue, for the enforcement of his judgment *previously obtained*.

Respondents' counsel, in their printed argument in this case,

page 15, claim that "a mandamus is not a writ of right, but "may be granted, or refused, in the discretion of the Court, to "which the application is made," and, citing some very ancient authorities, add: "We think there is no case to be found "wherein it has been held that a writ of mandamus *is* a writ "of right, or, that the granting or refusing it is not a mat- "ter resting exclusively within the discretion of the Court to "which the application is made."

Such is not the law now even in England, and we need cite but one or two authorities among the many in this country to contradict it.

Commonwealth of Kentucky vs. Dennison, 24 Howard, 97, the Court say: "It is equally well settled that a mandamus "in modern practice, is nothing more than an action in law, "between the parties, and is not now regarded a prerogative "writ. It undoubtedly came into use by virtue of the preroga- "tive power of the English Crown, and was subject to rules and "regulations, which have long since been disused. But the right "to the writ, and the power to use it, has ceased to depend upon "any prerogative powers, and is now regarded as an ordinary "process in cases to which it is applicable."

In *Kendall vs. Stokes*, 3 Howard, 100, the Court say a writ, of mandamus, is "nothing more than the ordinary process of a "Court of justice, to which every one is entitled when it is the "appropriate process for asserting the right which he claims."

There are but two writs, or processes, provided in law, for the enforcement of a money judgment, execution and mandamus. We have seen that an execution in this suit would be utterly unavailing, and as this Court has decided in a similar case that the bondholders of the county are "not left to the uncertain and in-

"sufficient remedy," of execution against the "public property "of the county," though that was not exempt from levy, when the bonds as in this case, "provides a special fund for their pay- "ment," *we submit that the relator is shut up to his "only "remedy," the collection of his debt by mandamus.* Take this from him, and what has he left? Deny him this, and what does he receive instead? Nothing.

That this Court has the power, to issue the writ of mandamus, is conceded. The case is made out. The parties and subject matter within its jurisdiction. Shall its "ordinary process," in this proper case be stayed, and its authority defied, and the respondents find protection under the preliminary injunction ordered by a Judge of the State Court, upon a less than *ex parte* case?

If we grant the proposition that such a case could be made out which, by comity of the Federal Courts, would lead them to respect, yet would we not yield the point, without first examining the grounds, moving the State Court, to take the action. Then why did the State Court enjoin the levy of the tax on this case? Simply because the bonds *by them were held to be void?* But this the Federal Court denies, and by its judgment solemnly adjudges to be erroneous. What then of comity in such a case? To yield here is to surrender a principle which the Federal Court had the superior right to, and did, establish by reason of her prior jurisdiction. To yield here is to admit that the State Court can abrogate the judgments of the Federal Court, whenever in the opinion of the former, they have been erroneously entered.

That this can not be done, and that the Federal Courts will not allow the State Courts to enjoin their process, has been held by—

Hyde vs. Stone, 20 Howard, 175;
McKim vs. Voorhies, 7 Cranch, 279;
Wyman vs. Southard, 10 Wheaton, 1;
McClunge vs. Silliman, 6 Wheaton, 598;
Knox County vs. Aspinwall, 24 Howard, 376;

and other cases with which this Court are familiar.

In the first case, *Hyde vs. Stone*, the Court say: "But this "Court has repeatedly decided that the jurisdiction of the Courts "of the United States over controversies between citizens of "different States, cannot be impaired by the laws of the States, "which prescribe the modes of redress in their Courts, or which "regulate the distribution of their judicial power. In many "cases State laws form a rule of decision for the Courts of the "United States, and the forms of proceeding in those Courts "have been assimilated to those States, either by legislative en- "actment, or by their own rules. But the Courts of the United "States are bound to proceed to judgment and to afford redress "to suitors, before them, in every case to which their jurisdic- "tion extends. They cannot abdicate their authority or duty in "any case in favor of another jurisdiction."

Snydam vs. Broadnax, 14 Peters, 67;
Union Bank vs. Jolly, 18 Howard, 503.

In both *Sturgis vs. Crowninshield*, 4 Wheaton, 122, and *Ogden vs. Saunders*, 12 Wheaton, 213, "the obligation of a "contract" is defined to be "the law which binds the parties to "perform their agreement." And in the latter case, Washington, J., says: "The law then, which has this binding obligation, "must govern and control the contract in every shape, in which "it is intended to bear upon it, whether it affects its validity, "construction or discharge."

In this case it was held that both the General Government and the States had the power to pass insolvent or bankrupt laws, and to discharge debtors by their complying with the requirements of the acts. And Johnson, J., in his opinion, Marshall, C. J., with Duval and Story assenting, says that "the fair and ordinary "exercise of that power by the States, does not necessa- "rily involve a violation of the obligation of contracts *multo* "*fortiori*, of posterior contracts. But when, in the exercise "of that power, the States pass beyond their own limits and "the rights of their own citizens, and act upon the rights of "citizens of other States, there arrives a conflict of sovereign "power, and a collision with the judicial powers granted to the "United States, which renders the exercise of such a power "incompatible, with the rights of other States, and with the "Constitution of the United States."

If such language may be used towards the law-making department of the State, certainly it would apply with equal force to the judicial branch of the States.

"But there is a conflict," we are told. So is there a conflict in every suit tried in a Court, and the theory of the law is, that the *right* prevails in the conflict. Will this Honorable Court, to which we are accustomed to look up, as the great fountain of justice and wisdom, be satisfied with less than that which is given to a guilty culprit in a State tribunal? Again, we are told "it is inexpedient," and we reply, in the words of another, "it is always expedient to do right." But we may be further told that right and wrong are relative terms, and different tribunals must determine these for themselves. Grant it so. Then let the State Court be content with retaining what it has, with exercising a jurisdiction over parties who come, or are properly brought before it. Do respondents reply, the supervi-

sors, were properly before that Court, and duly served. So they were, and so far as plaintiffs in that suit are concerned, they seeking to collect any of said bonds, would be estopped. The respondents could plead the judgment against them. But if another person, not a party to said suit, one who had vested rights, who owned bonds not derived through the said plaintiffs, and in no way privy to them, comes to this, another tribunal, seeking redress, he may not be concluded by such a suit.

It will hardly be contended that the District Court of Henry county, Iowa, could pronounce a general decree of outlawry against the bonds themselves, and that too in an action *in personam!* To undertake this would be as futile and harmless as the Pope's bull against the comet.

But still "there is a conflict" between the Courts, and one must give way. The wisdom and learning of the Supreme Court of the United States is presumed to be, at least, equal to that of any other Court in the land. Its decisions upon the validity of these railroad bonds have been uniform, running through a great number of years, and in the consideration of a great number of cases. The Judges of this Court hold their offices for life. On the other hand, the office of Judgeship in Iowa, is elective, and the incumbent sits for only a few years. It has only been sixteen years since the first decision was made in Iowa upon a railroad bond, and for twelve years of that time all the Courts of the State upheld the validity of the bonds. About four years ago, and *since the office has become elective*, the Supreme Court of that State has made a change, and overruled all its former adjudications on this question. The office is still elective, and may we not expect, after a monition from this Court, that if the present incumbents do not, their successors in office will

make a second change, and return to the better law of the earlier Judges?

But "still there is a conflict," and if this Court awards a mandamus, these respondents "will be placed between two fires," and the inquiry is how can they be extricated. Technically, the injunction does not restrain respondents from levying a tax to pay relators' judgments, but only "from levying or causing to "be levied any tax for the purpose of paying either the principal "or interest of the coupons, mentioned in the plaintiffs' peti- "tion." And when we remember that every creditor of a municipal corporation in Iowa, *after he has obtained a judgment on his debt*, has a right given him by a statute (which has been in force fifteen years) to have that judgment paid *by the levy of a tax*, (provided the corporation debtor issues no scrip,) we think it can well be said, *the District Court of Henry county did not intend by its injunction to stay the collection of relators' judgments.*

Section 3,275, Revision 1860, found in a chapter on executions, reads as follows: "In case no property is found on which "to levy, which is not exempted by the last section, or if the "judgment creditor elect not to issue execution against such a "corporation, he is entitled to the amount of his judgment and "costs in the ordinary evidences of indebtedness, issued by that "corporation. And if the debtor corporation issues no scrip or "evidence of debt, *a tax must be levied*, as early as practicable, "sufficient to pay off the judgment with interest and costs."

In two recent cases in the Supreme Court of Iowa, *Coy vs. City of Lyons*, 17 Iowa, 1, and *Clark, Dodge & Co. vs. City of Davenport*, 14 Iowa, 494, it has been held that the *creditor* has the right to elect whether he will take scrip or

demand a levy of a tax to be made. Thus construed, the proviso is no limitation on the power, and whatever may be said against the granting of a mandamus to levy a tax, to pay the principal or interest of coupons, the right of a judgment creditor of a county in Iowa, to have "a tax levied as early as practicable, sufficient to "pay off the (his) judgment, with interest and cost," *is absolute and statutory.*

Again, the statute of Iowa, adopted by the rule of the Circuit Court, in chapter on mandamus, section 3,770, Revision 1860, as if in contemplation of the present state of affairs, provides that the Court may direct the act, which the respondents should have performed, "to be done by the plaintiff himself, or some other "person, appointed by the Court." And aside from all this, the law is clear, that where the Court has the right and power, to enforce the levy of the tax, it will not be confined in its choice of the means or medium, to an unwilling and insufficient executioner.

We say then, to these timid, fire-bound respondents, *quid times.* The highest Court of the land (6 Wheaton, 598,) has decided "it is not bound to encounter phantoms."

VI.

The respondents, in connection with this plea of the conflict of Courts, produce just two authorities: *Ex parte Fleming*, 4 Hill, 581; and *Ohio and Indiana Railroad Company vs. Wyandotte County*, 7 Ohio State, R. 278.

In review of the first case named, we say it is the decision of no Court, but only the opinion of a single Judge of a Court of subordinate jurisdiction, sitting at chambers. He (Cowen, J.)

is the same Judge who declared a "mandamus was a prerogative "writ," which he had the power to issue, or withhold, at his pleasure; and to his imagination we are indebted for first placing the respondents in position for a double judicial enfilading.

But the case is not parallel to the one at bar. A proceeding by several creditors in aid of execution was pending before a county Court, to compel a judgment debtor to pay their claims against him, or go to jail. A sentence of commitment had been announced, when the debtor obtained a writ of injunction from the Federal Court, to prevent its execution and to stay the mittimus. The next movement was by Fleming, one of the prosecuting creditors, making an application to Judge Cowen, of the Supreme Court of New York, for a writ of mandamus to compel the county Judge to issue the warrant to commit the debtor, when the county Judge pleaded the injunction proceedings against its allowance.

The case is dissimilar, because all the proper parties were before the Federal Court. We say all, because the law of the United States, section 5, act of March 2, 1793, 1 Statute at Large, 334, requires notice to be given to the opposite parties *in all cases* brought in the Federal Court for injunction; and we may presume this was done, before that Court awarded the writ. Besides it was directed to the chief defendant by name.

Again, good law is the science of reason; but we look in vain for sound reasoning in this case. To say the most, it was all judicial comity—deference to the Federal Court—when the Judge not only confessed "that it was certainly impossible for me "(him) in the case stated to see expressly that the injunction "was properly issued," when he must have known that the granting of an injunction by a Federal Court to stay the judg-

ment of a State Court was expressly inhibited by the same statute above cited. He also confesses the judgment of the Federal Court should not be regarded when it had not jurisdiction of the subject matter, and yet he did defer to it, in the very face of the statute, which negated that Court's power to grant such a writ.

In *Freeman vs. Howe*, 24 Howard, 459, the Court say: "No doubt if the Federal Court had no jurisdiction of the case "the process would be invalid, and the seizure of the property "illegal, for which the aggrieved party is entitled to his remedy."

Suppose then the Federal Court had undertaken to fine a party for the violation of some city ordinance, or that some Justice of the Peace had attempted to grant a divorce, in each of which cases the defendants had been duly served with notice, and the record of these cases had been offered in evidence in some controversy properly pending before Judge Cowan, involving said matters; how would or should he have regarded the same? How? but as the Supreme Court of Iowa did, in *Judah vs. Stephenson*, 10 Iowa, 493, as "a nullity."

The only explanation which can reconcile his action in the consideration of the statute and case referred to, would seem to be, that when the word "Court," was used there, it did not mean, or embrace, the word "Judge." But if such a distinction as this is to be recognized, certainly the difference between an injunction to stay the levy of a tax to pay railroad bonds. and one to stay the collection of a judgment against a county which issued them, should also be acknowledged.

As to the other case, *Ohio and Indiana Railroad Co. vs. Wyandotte County*, 7 O. S. R., 278, we have to say, it is unlike

the one we are considering, in that it was the *first* suit brought by the relator, as an original remedy, and the injunction forbid *verbatim et literatim*, the thing asked for by the mandamus. The decree is rendered by only three of the five Judges, and the reasoning used by the Court in that case is, to say the least, peculiar. Both the decree of injunction, and the proceedings for mandamus were in the same Court, the injunction having precedence of date, and the *relators not having been made parties to it.*

The Court say as the Railroad Company were not made parties to the injunction suit, that the "*decree does not therefore "bind, or conclude, the Company by any of its findings.*" And, notwithstanding the Railroad Company was the beneficiary, and entitled to receive the stock, yet the Court excluded the said Company from their right to receive the stock; and even refused them the privilege of testing, or inquiring into the validity of the decree, which operated to keep them from obtaining the stock; and this, too, upon the ground that to allow the said Company to do it, would be "such inconsistency" as to be "wholly inadmissable."

But it has been contended that a mandamus is a new action, requiring new parties, and cannot be considered a continuation of the original suit on the coupons, so as to ante-date the jurisdiction of the Federal Court, to the time when the said suit at law was commenced.

We think this position is not well taken. It is admitted the Federal Court *can* issue writs of mandamus, and we have shown that in all such cases it must appear to be for the enforcement of some prior adjudicated right, or the rightful exercise of the

jurisdiction of the Court; and it matters not that new parties are necessary, and a different process employed.

Even where this was the case, and the further difficulty was presented in the Federal Courts that both parties, plaintiffs and defendants, were citizens of the same State; yet, in several cases, this Court has not hesitated to declare such suits "ancillary and "supplemental to the original suit." In 24 Howard, at page 460, we read: "The principle is that a bill filed on the equity side "of the Court, to restrain or regulate judgments or suits at law "in the same Court, and thereby prevent injustice, or inequitable "advantage under mesne or final process, is not an original suit, "but ancillary and dependant, supplementary merely to the "original suit, out of which it had arisen, and is maintained "without reference to the citizenship, or residence of the parties."

In *Minnesota Company vs. St. Paul Company*, 2 Wallace, 632, the Court say: "The present suit is really a continuation "of that one." The former suit referred to was an action of foreclosure against the La Crosse and Milwaukee Railroad Co. The "present suit" spoken of was by a different plaintiff against different defendants, for a different object; but yet, being connected with the same subject matter, about the same railroad, and the mortgaged property of the same, the Court overruled the plea to the jurisdiction, holding the "present bill necessary in order "to have a declaration of what was intended by the order and "decree made in that (former) suit, *and to enforce the rights "which were established by it.*"

The first was an ordinary action foreclosing a mortgage; the latter an action to quiet title, for the statement of an account, to recover a compensation in damages, for an injunction, the appointment of a receiver, and general relief; but all having

reference to "the road and rolling stock," of said Railroad Company, which, the Court declares, was "*the subject matter of the controversy;*" and, therefore, entertained jurisdiction, and would doubtless have maintained that jurisdiction against assumptions of any State Court.

We are told, further, that the "respondents are new parties," and that, therefore, this suit of mandamus is a "is a new suit," and not a continuation of the old one. But who are the Board of Supervisors, save the agents and immediate representatives of Henry county, the original defendant? They are the visible body of the invisible corporation, and we seek no action from them, save as the agents of the county. In the case last cited above, Pratt and White, who bought the railroad at the Marshal's sale, and held the title thereto, were citizens of the same State with the plaintiff, and this matter was set up to divest the Federal Court of its jurisdiction, as undoubtedly it would, had the last suit been considered a new suit; but the Court refused to entertain the plea, saying: "If the Court has jurisdiction of the matters "growing out of that sale, and order of possession, as we have "already shown that it has, then it has jurisdiction to that extent "of these parties without regard to their citizenship."

In both *Maddox vs. Graham*, 2 Metcalf, 56, and *Louisville vs. Kean*, 18 B. Monroe, 9, it was held that a suit by mandamus, to compel a corporation to do an act, was virtually a suit against a corporation itself. The county of Henry is still the real defendant and debtor; the respondents, but the exponent, or hand of the corporation, which we seek to have this Court move to her treasury for our relief.

See, also—

Blossom vs. Milwaukee & C. R. R. Co., 1 Wallace, 635;
De la Plaine vs. Lawrence, 10 Paige, 602.

We are aware that this Court will follow the decisions, and even the changes, of the State Courts upon "any principle of law "establishing a rule of *real property;*" but, if we look into these decisions, we will find very obvious reasons existing therefor, which do not apply in cases like the one under consideration.

Real estate is permanent property, and where *it* constitutes the subject matter of a suit, is always within the jurisdiction of the State Courts. States have the exclusive right to regulate its sale, transfer and descent, and the Legislature of States may change them at will. All this is but making, or changing, a "rule of property," which the Courts, State and Federal, will recognize. But when a negotiable instrument is made by an individual, or corporation, in due form of law — when it passes from the maker for a consideration, to the commercial world — it goes charged with no strictures of statute, with no limitations upon it but those of the common law of the land, founded upon common justice. All real estate has a written history. Its title, good or bad, is a matter of record—one buying, or loaning money upon it, can know, and is bound to know, what he gets. To determine the character of that title he must, of necessity, know the requirements of the statute, and the interpretation of the Courts upon all subjects affecting it; but all this is prepared for him in State laws, and decisions of State Courts, and ignorance here is culpable and fatal.

Not so with negotiable paper. This is made to pass from hand to hand, both in and out of the State, the world over. Particularly is this the case with a railroad bond, which is made to sell in the money marts of this and the old world. A purchaser examines it, and sees on the face a contract to pay back, on time, with interest, what the maker says, has been received. He buys it in New York or London, his rights become vested, and any

and every law, or decision, which destroys or affects those rights to his detriment, impairs the obligation of the contract, and is to be held for naught. Numerous decisions establish the law that the purchaser need not go back of the recitals on their face, to prove the regularity of the proceedings upon which the bonds were issued.

In conclusion, we say there are but just two ways of squarely avoiding the payment of these obligations. The first is to obtain the return of *nulla bona*, on a *fi. fa.* While the second is, *open repudiation of the contracts.* Respondents, and Henry county, have chosen the latter. Does this course commend them to the grace of this Court?

H. SCOTT HOWELL,
Attorney for Relator.

KEOKUK, IOWA.

SUPREME COURT OF THE UNITED STATES.

No. 360.

THE UNITED STATES, EX REL. J. EDGAR THOMSON, PLAINTIFF IN ERROR,

vs.

THE CITY COUNCIL OF KEOKUK, IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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a *Writ of error to the Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment, in the circuit court of the United States for the northern district of Illinois, before you, between the United States, at the relation of J. Edgar Thomson, and the city council of the city of Keokuk, Iowa, respondents, a manifest error hath happened, to the great damage of the said J. Edgar Thompson, relator, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and that full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington, D. C., on the fourth day of December next, in the said Supreme Court to be then and there held, that the record and proceedings
b aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

[SEAL.] WM. H. BRADLEY, *Clerk.*

c *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the city council of the city of Keokuk, Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, (1865,) pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the United States, at the relation of J. Edgar Thomson, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable , one of the justices of the said Supreme Court of the United States, this 28 day of Nov., in the year of our Lord 1865.

THOMAS DRUMMOND, *U S. Judge.*

KEOKUK, IOWA, *December 1st.*

Rec'd a true copy of this citation, and due and legal service of this writ on respondent is hereby acknowledged.

H. STRONG, *Att'y for Def'ts.*

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-room in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, district judge of said district, associate judges of said circuit court, on Tuesday, the seventeenth day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth year.

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, in the State of Iowa.
} Petition for writ of mandamus.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty-five, the United States, on relation of J. Edgar Thomson, by H. Scott
2 Howell, esq., his attorney, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a petition for a writ of mandamus against the city council of the city of Keokuk, Iowa, defendant, which said petition is in words and figures following, to wit:

Petition.

Circuit court of the United States for the northern district of the State of Illinois.

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thomson,
v.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.
} Petition for mandamus.

And now comes the United States of America, at the relation of J. Edgar Thomson, and complaining unto the honorable judge of this court of the parties hereinafter named, states, said J. Edgar Thomson is a citizen of the State of Pennsylvania, residing at Philadelphia, and that the city of Keokuk is a municipal corporation existing under and by virtue of the laws of the State of Iowa, and is a citizen of the State of Iowa, within the meaning and intent of the statutes of the United States.

3 Relator further states that on or about the 1st day of March, 1856, said city of Keokuk, Iowa, under and in pursuance of

her ordinance providing for her subscription to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Company, passed 5 February, 1856, under authority of an act of the legislature of the State of Iowa, approved January 22, 1853, executed by the hands of her mayor and city clerk, and under the seal of said city, her certain one hundred corporate bonds, for the sum of one thousand dollars each, payable twenty years after date, with eight per cent. interest, payable semi-annually, according to the tenor of coupons attached to each, all of which coupons were made payable to bearer, and the bonds made payable to the said railroad company or bearer, and were delivered to said railroad company to enable them to build their road, which terminates within the corporate limits of said city, and for which bonds said city has or is entitled to receive a corresponding amount of stock in said railroad company. Relator states the ordinance and statute aforesaid require the said city, by her proper officers, to levy and collect, in addition to other taxes, an annual
4 tax upon all property subject to taxation in said city, to pay said coupons and bonds as same become due respectively.

Relator states, further, that said bonds were sold in the market to various parties, and that he became the holder and owner of a large number of same, with the coupons attached, in the ordinary course of business, and for a valuable consideration paid before the maturity of same.

Relator states said city having failed to levy and collect an annual tax for the payment of the coupons maturing on said bonds, and some remaining unpaid, and there being no funds provided by said city for the payment of said coupons, he, the relator, afterwards brought suit against the said city of Keokuk, and the Keokuk, Mount Pleasant, and Muscatine Railroad Company, upon 108 of said coupons of $40 each, in the circuit court of the United States for the district of Iowa, but that the said suit was transferred pendente lite from said court to this court, being the next nearest district, by order and upon the motion of the judges of the said circuit court for the district of Iowa, on account of the direct personal pecuniary interest which each of said judges had in the matters in controversy therein, to which
5 order and change of venue each party to said order consented, whereby this court acquired jurisdiction of said cause. And on the 19th October, 1864, at the October term of this court, relator recovered judgment therein against said city for the sum of five thousand four hundred twenty-seven $\frac{50}{100}$ damages, with eight per cent. interest, and $87 35 costs of suit, which still remains in full force and unappealed.

Relator further states that on the 21st November, 1864, he, by his attorney, made personal demand upon the city council of said city, while in session in their council chamber in said city, that they should immediately levy and cause to be collected the taxes specified in said ordinance and laws, to pay off the said judgment, interest and costs.

Relator states that he, by his attorney, was present and heard the remarks and decisions of said city council of said city, respecting

said demand, and what they would do in relation to it, and he states after considerable deliberation they failed and declined to comply with said demand, claiming they were enjoined by order of the supreme court of Iowa from so doing, and that they proposed
6 to contest the right and power of this court to require them to levy and collect said railroad tax in any action which be brought by relator for that purpose against them, and relator states altho' said city council have had several meetings since said demand as aforesaid was made upon them, but that they have still failed, neglected, and refused to levy and collect the tax aforesaid.

Relator states said city council of said city are the legal representatives of said city, and the parties by whose order and action all corporation taxes are to be levied and collected, and other municipal duties are to be performed.

Relator states said city has no property or revenue which can be reached on execution, and that he is remediless and impotent to collect his judgment aforesaid, except through the exercise of the power of this court to award him a writ of mandamus to compel the levy and collection of said tax for the purpose aforesaid.

Relator therefore prays that your honors, the judges of this court, to award him a writ of mandamus to be issued by this court, under the seal thereof, directed to and commanding the city
7 council of the city of Keokuk, Iowa, at their next meeting, to levy a sufficient tax upon all the property subject to taxation within the corporate limits of said city, to pay said judgment of relator had and obtained in this court, with 8 per cent. interest and costs, and costs of this proceeding, and to collect same forthwith, and pay same over to relator, or his attorney, H. Scott Howell, and of said writ to make due return, with their doings thereon, into this court on the first day of the next March term of this court, to be held on the first Monday of March, 1865.

All of which relator claims as of right, and for which he will ever pray, &c.

United States of America at the relation of J. Edgar Thompson—
H. SCOTT HOWELL, *Att'y for Relator.*

STATE OF ILLINOIS, *Cook county, ss:*

I, H. Scott Howell, of lawful age, being first duly sworn, state I am attorney for J. Edgar Thompson, relator in above and fore-
8 going petition; that I have personal knowledge of the chief matters stated therein, and that the allegations of said petition are true, as I verily believe.

H. SCOTT HOWELL.

Sworn to and subscribed before me this 14th January, 1865.
WM. H. BRADLEY, *Cl'k.*

KEOKUK, *Iowa, Nov.* 21, 1864.

To the mayor and aldermen of the city of Keokuk, Iowa:

Whereas J. Edgar Thompson, at the October term, 1864, of the United States circuit court for the northern district of Illinois, recovered a judgment against the city of Keokuk, Iowa, for $5,427 50, and interest and costs upon coupons cut from certain eight per cent. railroad bonds issued by said city of Keokuk, under her ordinance providing for her subscription to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Co., under authority of an act of the legislature of Iowa, approved January 22, 1853, and for the payment of which you have failed to make any provision as required by law:

9 Now, therefore, this is to notify and demand of you that you do immediately levy and cause to be collected the taxes specified in the said laws, to pay off said judgment, or in default thereof said plaintiff will make application to the courts for a mandamus to require said acts at your hands.

J. EDGAR THOMPSON, *Pl'ff*,
By H. SCOTT HOWELL, *his Att'y.*

STATE OF IOWA, *County of Lee:*

I, H. Scott Howell, of lawful age, being first duly sworn, state that I served the within notice by reading same personally to mayor and aldermen of the city of Keokuk, while in session at Keokuk, on November 21st, 1864, and by giving to the clerk of said city council at same time a true copy of same.

H. SCOTT HOWELL.

Sworn to and subscribed before me this 23d day of November, A. D. 1864, as witness my hand and seal notarial.

[SEAL.] ANDREW LE FEVRE,
Notary N. P. Lee Co., Iowa.

10 Indorsed: Filed Jan'y 14th, 1865.
WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 14th day of January, A. D. 1865, in the December term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Order of court.

UNITED STATES OF AMERICA, *ex rel.* of J. Edgar Thomson, *vs.* THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.	Petition for mandamus.

Upon the petition in the above-entitled cause being this day presented by counsel for relator in open court, it is ordered that an alternative writ of mandamus issue thereon as prayed for, (embracing a copy of said petition,) under the seal of this court, directed to the

city council of the city of Keokuk, Iowa, requiring them to do and perform the acts prayed for in said petition, or to show cause, if any they can, why the relief prayed for by relator should not be granted and said acts and deeds named therein should not be done and performed at the hands of said defendants; that said writ be
11 made returnable on the first day, being the first Monday, of our next March term of this court, for further hearing and order herein.

On this day, to wit, the nineteenth day of January, A. D. 1865, an alternative writ of mandamus issued out of said clerk's office in said entitled cause; which said writ, together with the return of the marshal thereon, is in words and figures following, to wit:

Alt. writ.

THE UNITED STATES OF AMERICA, *Northern district of Illinois:*

The United States of America to the city council of the city of Keokuk, Iowa, greeting:

Whereas the United States of America, at the relation of J. Edgar Thomson, filed in the circuit court of the United States for the northern district of Illinois, on the fourteenth day of January, A. D. eighteen hundred and sixty-five, a petition for a writ of mandamus against the city council of the city of Keokuk, Iowa, which is in the words and figures following, to wit:

12 *Petition for mandamus.*

Circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERIRA, *ex rel.* J. Edgar Thomson,
v.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

And now comes the United States of America, at the relation of J. Edgar Thompson, and complaining unto the honorable judges of this court of the parties hereinafter named, states said J. Edgar Thomson is a citizen of the State of Pennsylvania, residing at Philadelphia, and that the city of Keokuk is a municipal corporation existing under and by virtue of the laws of the State of Iowa, and is a citizen of the State of Iowa within the meaning and intent of the statutes of the United States.

Relator further states that on or about the 1st day of March, 1856, said city of Keokuk, Iowa, under and in pursuance of her ordinance providing for her subscription to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Company, passed 5 February, 1856, under authority of an act of the legislature of the State of Iowa, affirmed January 22, 1853, executed by the hands of her mayor and city clerk, and under the seal of said city, her certain one hundred corporate bonds for the sum of one thousand dollars each,

13 payable twenty years after date, with eight per cent. interest, payable semi-annually, according to the terms of coupons attached to each, all of which coupons were made payable to bearer and the bonds made payable to the said railroad company, or bearer, and were delivered to said railroad company to enable them to build their road, which terminates within the corporate limits of said city, and for which bonds said city has or is entitled to receive a corresponding amount of stock in said railroad company.

Relator states the ordinances and statutes aforesaid require the said city, by her proper officers, to levy and collect, in addition to other taxes, an annual tax upon all property subject to taxation in said city, to pay said coupons and bonds as same became due respectively.

Relator states further that said bonds were sold in the market to various parties, and that he became the holder and owner of a large number of the same, with the coupons attached, in the ordinary course of business, and for a valuable consideration paid before the maturity of same.

Relator states said city having failed to levy and collect an
14 annual tax for the payment of the coupons maturing on said bonds, and same remaining unpaid, and there being no funds provided by said city for the payment of said coupons, he, the relator, afterwards brought suit against said city of Keokuk and the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, upon 108 of said coupons of $40 each, in the circuit court of the United States for the district of Iowa, but that the said suit was transferred pendente lite from said court to this court, being the next nearest district, by order and upon the motion of the judges of said circuit court for the district of Iowa, on account of the direct personal pecuniary interest which each of said judges had in the matters in controversy therein, to which order and change of vendue each party to said action consented, whereby this court acquired jurisdiction of said cause, and on the 19th October, 1864, at the October term of this court, relator recovered judgment therein against said city for the sum of five thousand four hundred twenty-seven and $\frac{80}{100}$ dollars damages, with 8 per cent. interest, and $87 35 costs of suit, which still remains in full power and unappealed.

Relator further states that on the 21st November, 1864, he, by his attorney, made a personal demand upon the city council of
15 said city, while in session in their council chamber in said city, that they should immediately levy and cause to be collected the taxes specified in said ordinance and laws to pay off the said judgment, interest and costs.

Relator states he, by his attorney, was present and heard the remarks and discussion of said city council of said city respecting said demand, and what they would do in relation to it, and he states, after considerable deliberation, they failed and declined to comply with said demand, claiming they were enjoined by order of the supreme court of Iowa from so doing, and that they proposed to contest the right and power of this court to require them to levy and collect said

railroad tax in any action which be brought by relator for that purpose against them, and relator states altho. said city council have had several meetings since said demand as aforesaid was made upon them, but that they have still failed, neglected, and refused to levy and collect the tax aforesaid.

Relator states said city council of said city are the legal representatives of said city, and the parties by whose order and action all corporation taxes are to be levied and collected and other municipal duties are to be performed.

16 Relator states said city has no property or revenue which can be reached on execution, and that he is remediless and impotent to collect his judgment aforesaid except through the exercise of the powers of this court to award him a writ of mandamus to compel the levy and collection of said tax for the purpose aforesaid.

Relator therefore prays that your honors, the judges of this court, to award him a writ of mandamus to be issued by this court, under the seal thereof, directed to and commanding the city council of the city of Keokuk, Iowa, at their next meeting, to levy a sufficient tax upon all the property subject to taxation within the corporate limits of said city, to pay said judgment of relator had and obtained in this court, with 8 per cent. interest and costs, and costs of this proceeding, and to collect same forthwith, and pay same over to relator or his attorney, H. Scott Howell, and of said writ to make due return, with their doings thereon, into this court on the first day of the next March term of this court to be held on the first Monday of March, 1865; all of which relator claims as of right and for which he will ever pray, &c.

17 United States of America at the relation of J. Edgar Thompson—

H. SCOTT HOWELL, *Att'y for Relator.*

STATE OF ILLINOIS, *Cook county, ss:*

I, H. Scott Howell, of lawful age, being first duly sworn, state that I am attorney for J. Edgar Thompson, relator in above and foregoing petition; that I have personal knowledge of the chief matters stated therein, and that the allegations of said petition are true, as I verily believe.

H. SCOTT HOWELL.

Sworn to and subscribed before me this 14th January, 1865.

WM. H. BRADLEY, *Cl'k.*

KEOKUK, IOWA, *Nov.* 21, 1864.

To the mayor and aldermen of the city of Keokuk, Iowa:

Whereas J. Edgar Thompson, at the October term, 1864, of the United States circuit court for the northern district of Illinois, recovered a judgment against the city of Keokuk, Iowa, for $5,437 50, and interest and costs upon coupons, cut from certain eight per cent. railroad bonds, issued by said city of Keokuk, under her ordinance providing for her subscription to the capital stock of the Keo-

18 kuk, Mount Pleasant, and Muscatine Railroad Co., under authority of an act of legislature of Iowa, approved January 22, 1853, and for the payment of which you have failed to make any provision, as required by law: Now, therefore, this is to notify and demand of you that you immediately levy and cause to be collected the taxes specified in the said laws to pay off said judgment, as in default thereof said plaintiff will make application to the courts for a mandamus to require said acts at your hands.

J. EDGAR THOMPSON, *Pl'ff*,
By H. SCOTT HOWELL, *his Att'y.*

STATE OF IOWA, *County of Lee:*

I, H. Scott Howell, of lawful age, being first duly sworn, state that I served the within notice by reading same personally to mayor and aldermen of the city of Keokuk, while in session at Keokuk, on November 21st, 1864, and by giving to the clerk of said city council, at same time, a true copy of same.

H. SCOTT HOWELL.

Sworn and subscribed before me this 23d day November, A. D. 1864, as witness my hand and seal notarial.

19 [SEAL.] ANDREW LE FEVRE,
Notary N. P. Lee County, Iowa.

[5-ct. rev. stamp, cancelled.]

Indorsed: Filed Jan'y 14th, 1865.

WM. H. BRADLEY, *Cl'k.*

Petition for mandamus.

And therefore, on the same day, to wit, January 14, A. D. 1865, the following order was made in said court in said entitled cause, to wit:

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

Upon the petition in the above-entitled cause being this day presented by counsel for relator in open court, it is ordered that an alternative writ of mandamus issue thereon as prayed for, (embracing a copy of said petition,) under the seal of this court, directed to the city council of the city of Keokuk, Iowa, requiring them to do and perform the acts prayed for in said petition, or to show cause, if any they can, why they should not be done, and the relief prayed for
20 by relator should not be granted, and said acts and deeds named therein should not be done and performed at the hands of said defendants; that said writ be served upon the mayor of said city and made returnable on the first day, being the first Monday of

our next March term of this court, for further hearing and order therein.

Now, therefore, these presents are to command you, the city council of the city of Keokuk, Iowa, that you, at your next meeting, do and perform all the acts and things prayed for in said petition, so far as same can be done, or to show cause why same should not be done, and the relief prayed for by said relator in his petition should not be granted and enforced. And of this writ, and in what manner this our command shall be executed by you, you are required to make due return unto the justices of this court, on the first day of the next term thereof, being the first Monday of March, A. D. 1865, and hereof fail not, at your peril.

To the marshal of the district of Iowa to execute according to law.

21 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Chicago, in the district aforesaid, this nineteenth day of January, A. D. 1865, and of our independence the 89th.

[SEAL.] WM. H. BRADLEY, *Cl'k.*

[50-ct. rev. stamp.]

Marshal's return.

Rec'd a writ, of which this is a true copy, Jan. 30, '65, which I served by reading the same to H. B. Ten Eyck, president of the city council of the city of Keokuk, Lee county, Iowa. I also left with him the original writ, of which this is a true copy, on the 17th of Feb'y, 1865, in the city of Keokuk, Lee county, Iowa.

H. M. HOXIE, *U. S. M.*,
By H. FULTON, *Dep't.*

Indorsed: Filed March 7th, 1865.

WM. H. BRADLEY, *Cl'k.*

Motion to quash.

On this day, to wit, the eleventh day of April, A. D. 1865, came said defendant, by its attorneys, and filed in the office of the clerk of said court its motion to quash return of writ; which said motion is in the words and figures following, to wit:

United States circuit court for the northern district of Illinois.

22 THE UNITED STATES OF AMERICA, *ex relatione* J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK.

Now comes def't, city council of city of Keokuk, Iowa, by A. W. Arrington and H. Strong, its atty's, and making a special appearance for the purpose of this motion, move the court to quash the service and return of service of the alternative writ of mandamus; because, 1, the service, as shown by the return, was made upon H. B. Ten Eyck as president of the city council of city of Keokuk, when, by law and the charter of the said city, the mayor is the proper officer upon

whom service should have been made, there being no averment in the petition that the mayor was absent, and the writ was not served on all of the members of the city council, or served as required by law; 2d, the return does not state where said writ was served, or in what district or by what officer; whether the person serving it was at the time marshal of this or any other judicial district.

A. W. ARRINGTON, and
H. STRONG, *Att'ys for Def'ts.*

Indorsed: Filed April 11, 1865.
23 WM. H. BRADLEY, *Cl'k.*

Affidavit.

On this day, to wit, the 11th day of April, A. D. 1865, said relator, by his attorney, filed in said clerk's office an affidavit in said entitled cause, which said affidavit is in words and figures following, to wit:

STATE OF ILLINOIS, *Cook co., ss:*

I, H. Scott Howell, of lawful age, state I am a citizen of and have been residing in the city of Keokuk, Iowa, for more than one year next preceding this date. That J. M. Hiatt has been mayor of said city for the year preceding 1st Monday of April, 1865, and that from about the first of January, A. D. 1865, to 30 of March, 1865, when affiant left his home, said J. M. Hiatt, mayor, was not in the city of Keokuk or State of Iowa, but was on east "office seeking" from the President; and affiant further states H. B. Ten Eyck, during said period, was president of the city council, and acting as mayor of said city; and further affiant says not.

H. SCOTT HOWELL.

Sworn to and subscribed before me on this 11 April, 1865.
E. A. DRUMMOND, *U. S. Com'r.*

Indorsed: Filed April 11, 1865.
24 WM. H. BRADLEY, *Cl'k.*

Petition for mandamus.

On this day, to wit, the 12th day of April, in the adjourned March term, A. D. 1865, of the said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

Now come the defendants, by A. W. Arrington and H. Strong, their attorneys, for the purpose of this motion, and move the court to quash the service and return of service of the alternative writ of mandamus issued herein, and the court, after hearing the arguments of counsel and not being sufficiently advised in the premises, takes time to consider.

On this day, to wit, the 13th day of April, in said March term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

25 *Order of court—petition for mandamus.*

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thomson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

The court having considered, and being now fully advised upon the motion of the defendant to quash the return to the alternative writ of mandamus heretofore submitted, and being of opinion that the notice to the defendants was insufficient sustain the motion and quash the return on the writ. And now, on motion of the relator, by H. Scott Howell, leave is given him to amend his information.

Amended information.

On this day, to wit, the 15th day of May, A. D. 1865, came said relator, by his attorney, and filed in said clerk's office his amended information in said entitled cause, which said amended information is in the words and figures following, to wit:

United States circuit court, northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thomson
vs.
26 THE CITY COUNCIL OF THE CITY OF Keokuk, in the State of Iowa.

And now come the United States of America, at the relation of J. Edgar Thomson, and by leave of the court first had and obtained, exhibit this amended petition for mandamus upon the city council of the city of Keokuk, in the State of Iowa.

And the relator states that he is a citizen of the State of Pennsylvania, and that said city is a citizen of the State of Iowa and a municipal corporation existing under and by virtue of the act of the legislature of the State of Iowa, entitled "An act to incorporate the city of Keokuk," approved December 13th, 1848, and various acts amendatory thereof.

Relator states that on the 19th day of October, A. D. 1864, at the October term of this court, relator recovered judgment in this court against said city for the sum of five thousand four hundred and twenty-seven dollars and fifty cents ($5,427 50) damages, with eight per centum interest, and eighty-seven dollars and thirty-five cents ($87 35) costs, which judgment still remains in full force and wholly unpaid. Said judgment was recovered in a cause then pending
27 in this court wherein relator was plaintiff and said city and the Keokuk, Mount Pleasant, and Muscatine Railroad Company were defendants; said cause was commenced in the circuit court of

the United States for the district of Iowa, and transferred therefrom pendente lite to this court, all parties consenting, by order and upon the motion of the judges of the circuit court of the United States for the district of Iowa, on account of the pecuniary interest which each of said judges had in the matters in controversy therein, and thereby this court acquired jurisdiction of said cause before the rendition of said judgment.

Relator states that said judgment was recovered upon 108 coupons or interest notes of said city, bearing date March 1st, 1856, payable to bearer, given for the payment of certain instalments of interest upon the certain bonds of said city of the same date for the sum of one thousand dollars ($1,000) each, payable to the Keokuk, Mount Pleasant, and Muscatine Railroad Company, or bearer, twenty (20) years after said date, with interest, payable semi-annually, which coupons and the bonds to which they had been attached were at the date of said judgment the property of relator.

28 And relator states that said coupon bonds are part of a series of one hundred bonds of the same date and amount, and in like manner payable, executed by the said city by the hands of her mayor and city clerk, and delivered to said company (to enable it to build its railroad) for a corresponding amount of stock in said railroad company.

And relator states that said one hundred bonds were executed and delivered by said city as aforesaid, under and in pursuance of an ordinance of said city council of the city of Keokuk, passed February 5th, A. D. 1856, entitled "An ordinance providing for the subscription to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company," and in force when said bonds were executed, which ordinance is as follows:

"Whereas by virtue of and in pursuance of an act of the general assembly of the State of Iowa amending the charter of the city of Keokuk, approved January 22, A. D. 1853, providing that the question of contracting indebtedness by the city council in certain cases shall be first submitted to the people of said city, and whereas due notice was given for an election on the 7th day of December,

29 A. D. 1855, at the usual place of holding elections in the city of Keokuk, submitting the question on the said mentioned day as to whether the said city should subscribe one hundred thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, payable in the bonds of the city of Keokuk, bearing interest at the rate of eight per cent. per annum interest, payable semi-annually in the city of New York; and whereas said election was held agreeably to said notice and in accordance with the law; and whereas there was at said election a majority of the votes in favor of such subscription: Now, therefore, be it ordained by the city council of the city of Keokuk—

"SECTION 1. That the mayor of said city is hereby empowereda authorized, and directed to subscribe the sum of one hundred thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, in behalf and in the name of said city,

by which act of the chief executive officer the faith of said city shall be irrevocably pledged to said company and their assigns in the sum of one hundred thousand dollars.

"SEC. 2. That in order to provide for the payment of the stock so subscribed, the mayor and recorder for the time being shall
30 execute the bonds of said city, amounting in the aggregate to the sum of one hundred thousand dollars, to be signed by the mayor, and countersigned by the city recorder, with the corporate seal of the city affixed, and bearing date the first day of March, A. D. 1856, and being payable twenty years after date thereof, to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, or bearer, in the sum of one thousand dollars each, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, with interest coupons thereto attached, signed by the mayor, and bearing even date with said bonds, and the principal and interest on said bonds being made payable at the Continental Bank, in the city of New York. The title of said bonds shall be the city of Keokuk eight per cent. railroad bonds, and numbered consecutively from number one to one hundred, inclusive."

"SEC. 3. That the mayor shall issue and deliver to the said railroad company so many of said bonds when executed as is provided in the preceding section, as at their par value may be sufficient for the payment of the whole of said subscription, at such times as said company may require, whether assessments have been made
31 upon other stockholders to the full amount of their respective subscriptions or not."

"SEC. 4. For the redemption of said bonds at their maturity, and the payment of the interest to accrue thereon, the said city of Keokuk pledges irrevocably, first, its faith and credit; second, the stock in the Keokuk, Mt. Pleasant, and Muscatine Railroad Company subscribed for by the said city, and the profits, accumulations, and dividends on said stock; third, the taxes levied and to be levied and collected on all property, real and personal, subject to and to become subject to taxation within said city of Keokuk. And the said city of Keokuk further agrees and stipulates with the said railroad company, and whoever may become the holder or holders of said bonds, or any of them, that the said bonds and the interest coupons annexed, when due, shall be received in payment for taxes, and all other dues to the city, and further, that the holder or holders of said bonds, or any of them, may, at any time within ten years from the date thereof, exchange the principal of said bonds, or any of them, for stock in the said railroad company at par, and the said city of Keokuk is irrevocably bound to transfer to the holder thereof, or his, her, or
32 their agent or attorney, within the time specified, for an amount equal at its par value to the principal which may be due thereon at the time of such demand, upon the surrender of said bonds, or any of them, and the unpaid coupons to said city. And, further, that the stock subscribed aforesaid to said railroad company shall be sacredly set apart and preserved for the redemption of the principal of said bonds, and shall not be used otherwise for any purpose, while any of

said bonds are outstanding, and the dividends of said stock shall be set apart for the payment of the interest on said bonds. And the city of Keokuk further agrees and stipulates that said bonds, with all the rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand payable to bearer."

"SEC. 5. Be it further ordained that at all elections of directors for said Keokuk, Mt. Pleasant, and Muscatine Railroad Company, or other elections in which the stockholders of said company, by the rules and regulations thereof, are authorized and entitled to vote, such vote or votes as the said city of Keokuk may be entitled to cast by virtue of her said subscription of one hundred thousand dollars shall
33 be thrown on behalf of said city by the mayor for the time being, or such other person or persons as the city council of said city may designate for such purpose, or by such proxy or proxies as may by him or them so designated by the city council be appointed in accordance with the by-laws of said company; said stock of said city to be represented by her delegated authority in the same manner, and to the same extent, subject also to the same restrictions as other stock owned and represented by individuals in said company." As in and by said ordinance, or the record thereof on file in the proper office, among the other records and ordinances of said city, will on reference more fully appear.

Relator states that by the 9th section of an act of the general assembly of the State of Iowa, entitled "An act to amend the charter of the city of Keokuk," passed July 25th, A. D. 1856, after reciting that 'at elections held at various times it was determined by the legal voters of the city of Keokuk that the city council should subscribe certain sums in the stock of the Keokuk, Fort Des Moines, and Minnesota Railroad Company, and in the Mississippi and Wabash Railroad Company, and in the Keokuk, Mt.
34 Pleasant, and Muscatine Railroad Company;" and that in some instances the bonds of the city had "been issued to pay for the subscription to said stock, and in others they had not been issued," and that "doubts exist as to the authority of the council to issue said bonds, and to provide by taxation for the payment of the principal and interest of said bonds," it was enacted "that the votes of the people of said city as aforesaid, and the acts of the said city council in accordance therewith, are hereby legalized and made firm, valid, and effectual to all intents and purposes, and that the city council of said city is hereby authorized, empowered, and directed to levy and collect such taxes as may be necessary to pay the principal and interest of said bonds which have been so issued, or of any which may hereafter issue in accordance with any of said notes; and that so much of any act as requires an annual vote to provide for levying the tax to pay the interest on any bonds of said city is hereby repealed. The taxes aforesaid shall be levied and collected in the same manner that the other annual taxes of the city are levied and collected."

35 Relator states that said general assembly provided, further, for the payment of the interest on said bonds, by the 7th section of chapter 238, laws 1857, approved January 27th, 1857, in and by which it was among other things enacted that "the city government are hereby authorized to levy such taxes as it or they may deem necessary to pay the interest upon the debt of said city and support and carry on its municipal affairs, and all laws contrary to this provision are hereby repealed."

Relator states that said city of Keokuk is situated in the county of Lee, in the State of Iowa, and that by a certain act of said general assembly, which became a law January 29th, 1857, entitled "an act legalizing the issue of county, city, and town corporation bonds in the counties of Lee and Davis;" it was among other things enacted in words following, that all votes heretofore taken in the counties of Lee and Davis, and in any city or town in Lee and Davis counties, in the form of a joint or several proposition, whether said counties, city, or town will aid in the construction of one or more railroads, specifying the amount to be given to each as a joint or several pro-
36 position, and the subscriptions made by said county, city, or town, and the bonds of said counties, city, or towns issued in pursuance of said votes and subscription, or hereafter to be issued, are hereby declared to be legal and valid, and that all such bonds issued and hereafter to be issued in pursuance of such votes and subscription, shall be a valid lien upon the taxable property of said county, city, or town." "Sec. 2. That the county judge, city council, or other proper authority of said county, city, or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds, and said counties, city, or town shall not be allowed to plead, in any suit brought to recover the principal or interest of such bonds, that the same are usurious, irregular, or invalid in consequence of the informalities cured by this act." "Sec. 3. That all bonds heretofore issued by Lee and Davis counties, and by any city or town in Lee and Davis counties, for subscription to railroads in pursuance of any vote by the people of said county, city or town heretofore had, shall be valid and of full legal and binding force and effect,
37 notwithstanding any informality or irregularity in the submission of the question to the vote of the people, or in taking of the vote authorizing the subscription to such railroads and the issuing of such bonds."

And relator insists that by reason of the premises said judgment is a valid lien upon the taxable property in said city of Keokuk, and that the city council should be required to levy and collect a tax upon said property, in the same manner that the other annual taxes of the city are levied and collected, and to apply the proceeds in payment of said judgment. Relator further states that on the 21st of November, 1864, he, by his attorney, made a personal demand upon the city council of said city, then in session in the city council chamber in said city, that they should immediately levy and cause to be collected the said taxes which were necessary to pay off said judgment, interest and costs that after considerable deliberation and discussion re-

specting said demand, failed and declined to comply with said demand, alleging that they were enjoined by order of the
38 supreme court of Iowa from so doing, and that they proposed to contest the right and power of this court to require them to levy and collect said railroad tax in any action which would be brought by relator for that purpose against them, and relator states that the said council have had several meetings since said demand, but have altogether failed, neglected, and refused to levy and collect the tax aforesaid. And relator states that the annual interest on the bonds of said city amounts to about $81,000, and that said city council has not levied a tax to pay any part of said interest since the year 1858, and that said city has no property or revenue which can be reached on execution, and that relator cannot collect his said judgment unless this court award him a writ of mandamus to compel the levy and collection of said tax for the purpose aforesaid.

Relator therefore prays (as he has heretofore prayed) your honors to award him a writ of mandamus, to be issued out of this court under the seal thereof, directed to and commanding the city council of the city of Keokuk, Iowa, at their next meeting, to levy a sufficient tax upon all the property subject to taxation within the cor-
39 porate limits of said city to pay said judgment of relator had and obtained in this court, with 8 per cent. interest, and costs, and to collect the same forthwith, and to pay the same over to relator, or to his attorney, H. Scott Howell, and of said writ to make due return with their doings thereon unto this court, on the first day of the next July term of this court, to be held on the 1st Monday in July, A. D. 1865, all of which relator claims, &c., for which he will ever pray, &c.

J. EDGAR THOMSON, *Relator*,
By WOODBRIDGE and
GRANT and
H. SCOTT HOWELL, *his Att'ys.*

UNITED STATES OF AMERICA, *State of Iowa, Lee county, ss:*

Personally appeared before me, clerk of the district court of the United States for the district of Iowa, H. Scott Howell, of lawful age, who, being by me first duly sworn, states he is personally acquainted with the chief facts stated in the above petition, and that all the allegations therein contained are true, as he verily believes, and that he is one of the attorneys for relator.

H. SCOTT HOWELL.

Sworn to and subscribed before me on this 4th May, 1865,
40 as witness my hand and the seal of said court.

[SEAL.] JOHN C. BURNS, *Clerk*,
By ERIE J. LEECH, *Deputy*.

[5-ct. U. S. rev. stamp, cancell'd.]

Indorsed: Filed May 15th, 1865.

WM. H. BRADLEY, *Clerk*.

On this day, to wit, the 15th day of May, in the adjourned May term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, IOWA. } Petition for mandamus.

On information, and amended information under oath, having been filed in this court by the United States of America, at the relation of J. Edgar Thompson against the said city council of the city of Keokuk, Iowa, now comes the said relator, by his attorney, and on his motion it is ordered by the court that an alternative writ of mandamus issue under the seal of this court, as prayed for in said information, and amended information, returnable on the first Monday of July next.

On this day, to wit, the 19th day of May, A. D. 1865, an alternative writ of mandamus issued out of said clerk's office against said defendant in said entitled cause, which said writ, together with the return of the marshal thereon, is in words and figures following, to wit:

41 *Alt. writ of mandamus.*

Circuit court United States, northern district of Illinois.

The United States of America, to the city council of the city of Keokuk, in the State of Iowa, greeting:

Whereas the United States of America, at the relation of one J. Edgar Thompson, has filed in the circuit court of the United States for the northern district of Illinois an information and amended information representing the facts, and containing a prayer for a writ of mandamus, as follows, to wit:

And relator states that he is a citizen of the State of Pennsylvania, and that said city is a citizen of the State of Iowa, and a municipal corporation existing under and by virtue of the act of the legislature of the State of Iowa, entitled "An act to incorporate the city
42 of Keokuk," approved December 13th, 1848, and various acts amendatory thereof. Relator states that on the 19th day of October, A. D. 1864, at the October term of this court, relator recovered judgment in this court against said city for the sum of five thousand four hundred and twenty-seven dollars and fifty cents ($5,427 50) damages, with eight per centum interest, and eighty-seven dollars and thirty-five cents ($87 35) costs, which judgment still remains in full force, and wholly unpaid. Said judgment was recovered in a cause then pending in this court, wherein relator was plaintiff and said city and the Keokuk, Mount Pleasant, and Muscatine Railroad Company were defendants. Said cause was commenced in the circuit court of the United States for the district of Iowa, and transferred therefrom pendente lite to this court, all parties consenting, by order and upon the motion of the judges of the circuit court of the United States for the district of Iowa, on account of the pecuniary interest which each of said judges had in the matter in controversy

therein, and thereby this court acquired jurisdiction of said cause before the rendition of said judgment.

Relator states that said judgment was recovered upon 108
43 coupons or interest notes of said city, bearing date March 1st, 1856, payable to bearer, given for the payment of certain instalments of interest upon the certain bonds of said city, of the same date, for the sum of one thousand dollars ($1,000) each, payable to the Keokuk, Mount Pleasant, and Muscatine Railroad Company, or bearer, twenty (20) years after said date, with interest payment semi-annually, which coupons and the bonds to which they had been attached were at the date of said judgment the property of relator.

And relator states that said coupon bonds are part of a series of one hundred bonds of the same date and amount, and in like manner payable, executed by the said city by the hands of her mayor and city clerk, and delivered to said company (to enable it to build its railroad) for a corresponding amount of stock in said railroad company.

And relator states that said one hundred bonds were executed and delivered by said city as aforesaid, under and in pursuance of an ordinance of said city council of the city of Keokuk, passed February 5th, A. D. 1856, entitled "An ordinance providing for the subscription to the capital stock of the Keokuk, M't Pleasant, and Muscatine Railroad Company, and in force when said bonds were exe-
44 cuted, which ordinance is as follows:

"Whereas, by virtue of and in pursuance of an act of the general assembly of the State of Iowa, amending the charter of the city of Keokuk, approved January 22d, A. D. 1853, providing that the question of contracting indebtedness by the city council in certain cases shall be first submitted to the people of said city, and whereas due notice was given for an election on the 7th day of December, A. D. 1855, at the usual place of holding elections in the city of Keokuk, submitting the question on the said mentioned day as to whether the said city should subscribe one hundred thousand dollars to the capital stock of the Keokuk, M't Pleasant, and Muscatine Railroad Company, payable in the bonds of the city of Keokuk, bearing interest at the rate of eight per cent. per annum, interest payable semi-annually in the city of New York, and whereas said election was held agreeably to said notice, and in accordance with the law, and whereas there was at said election a majority of the voters in favor of such subscription, now, therefore, be it ordained by the city council of the city of Keokuk:

"SECTION 1. That the mayor of said city is hereby empowered,
45 authorized, and directed to subscribe the sum of one hundred thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, in behalf and in the name of said city, by which act of the chief executive officer the faith of said city shall be irrevocably pledged to said company and their assigns in the sum of one hundred thousand dollars.

"SEC. 2. That in order to provide for the payment of the stock so subscribed the mayor and recorder for the time being shall execute the bonds of said city, amounting in the aggregate to the sum of one

hundred thousand dollars, to be signed by the mayor and countersigned by the city recorder, with the corporate seal of the city affixed, and bearing date the first day of March, A. D. 1856, and being payable twenty years after date thereof to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, or bearer, in the sum of one thousand dollars each, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, with interest coupons thereto attached, signed by the mayor, and bearing even date with said bonds, and the principal and interest on said bonds being made payable at the Continental Bank in the city of New York. The title of
46 said bonds shall be 'city of Keokuk eight per cent. railroad bonds, and numbered consecutively from one to one hundred, inclusive.

"SEC. 3. That the mayor shall issue and deliver to the said railroad company so many of said bonds, when executed, as is provided in the preceding section, as at their par value may be sufficient for the payment of the whole of said subscriptions, at such time as said company may require, whether assessments have been made upon other stockholders to the full amount of their respective subscriptions or not.

"SEC. 4. For the redemption of said bonds at their maturity, and the payment of the interest to accrue thereon, the said city of Keokuk pledges irrevocably, first, its faith and credit; second, the stock in the Keokuk, Mt. Pleasant, and Muscatine Railroad Company subscribed for by the said city, and the profits, accumulations, and dividends on said stock; third, the taxes levied and to be levied and collected on all property, real and personal, subject to, and to become subject to, taxation within said city of Keokuk; and the said city of Keokuk further agrees and stipulates with the said railroad company, and whoever may become the holder or holders of said bonds, or
47 any of them, that the said bonds, and interest coupons annexed, when due, shall be received in payment for taxes and all other dues to the city; and, further, that the holder or holders of said bonds, or any of them, may at any time within ten years from the date thereof, exchange the principal of said bonds, or any of them, for stock in the said railroad company at par, and the said city of Keokuk is irrevocably bound to transfer to the holder thereof, or his or her or their agent or attorney, within the time specified for, an amount equal at its par value to the principal which may be due thereon at the time of such demand, upon the surrender of said bonds, or any of them, and the unpaid coupons to said city; and, further, that the stock subscribed aforesaid to said railroad company shall be sacredly set apart and preserved for the redemption of the principal of said bonds, and shall not be used otherwise for any purpose while any of said bonds are outstanding, and the dividends of said stock shall be set apart for the payment of the interest on said bonds; and the city of Keokuk further agrees and stipulates that the said bonds, with all the rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand payable to bearer.

48 "SEC. 5. Be it further ordained that at all elections of directors for said Keokuk, Mt. Pleasant, and Muscatine Railroad Company, or other elections in which the stockholders of said company, by the rules and regulations thereof, are authorized and entitled to vote, such vote or votes as the said city of Keokuk may be entitled to cast by virtue of her said subscription of one hundred thousand dollars shall be thrown on behalf of said city by the mayor for the time being or such other person or persons as the city council of said city may designate for such purposes or by such proxy or proxies as may by him or them so designated by the city council be appointed in accordance with the by-laws of said company, said stock of said city to be represented by her delegated authority in the same manner and to the same extent, subject also to the same restrictions, as other stock owned and represented by individuals in said company.

As in and by said ordinance, or the record thereof, on file in the proper office among the other records and ordinances of said city, will, on reference, more fully appear. Relator states that by the 9th section of an act of the general assembly of the State of Iowa, entitled "an act to amend the charter of the city of Keokuk," passed July 25th, A. D. 1856, after reciting that "at elections held at various times it was determined by the legal voters of the city of Keokuk that the
49 city council should subscribe certain sums in the stock of the Keokuk, Fort Des Moines, and Minnesota Railroad Company and in the Mississippi and Wabash Railroad Company, and in the Keokuk, Mt. Pleasant, and Muscatine Railroad Company," and that in some instances the bonds of the city had been issued to pay for the subscription to said stock, and in others they had not been issued, and that doubts exist as to the authority of the council to issue said bonds and to provide by taxation for the payment of the principal and interest of said bonds, it was enacted "that the votes of the people of said city as aforesaid, and the acts of the said city council in accordance therewith, are hereby legalized and made firm, valid, and effectual to all intents and purposes, and that the city council of said city is hereby authorized, empowered, and directed to levy and collect such taxes as may be necessary to pay the principal and interest of said bonds which have been so issued, or of any which may hereafter issue in accordance with any of said votes, and that so much of any act as requires an annual vote to provide for levying the tax to pay the interest on any bonds of said city is hereby repealed.
50 The taxes aforesaid shall be levied and collected in the same manner that the other annual taxes of the city are levied and collected."

Relator states that said general assembly provided, further, for the payment of the interest on said bonds by the 7th section of chapter 238, laws 1857, approved January 27th 1857, in and by which it was among other things enacted that "the city government are hereby authorized to levy such taxes as it or they may deem necessary to pay the interest upon the debt of said city, and support and carry on its municipal affairs, and all laws contrary to this provision are hereby repealed." Relator states that said city of Keokuk is situated in the

county of Lee, in the State of Iowa, and that by a certain act of said general assembly, which became a law January 29th, A. D. 1857, entitled "An act legalizing the issue of county, city, and town corporation bonds in the counties of Lee and Davis," it was among other things enacted in words following, that all votes heretofore taken in the counties of Lee and Davis, and in any city or town in Lee and Davis counties, in the form of a joint or several propositions, whether said counties, city, or town will aid in the construction of one or more railroads, specifying the amount to be given to each, as a joint
51 or several proposition, and the subscriptions made by said county, city, or town, and the bonds of said counties, city, or towns issued in pursuance of said votes and subscriptions, or hereafter to be issued, are hereby declared to be legal and valid, and that all such bonds issued and hereafter to be issued in pursuance of such votes and subscriptions shall be a valid lien upon the taxable property of said county, city, or town.

"SEC. 2. That the county judge, city council, or other proper authority of said county, city, or town, shall levy and collect a tax to meet the payment of the principal and interest of such bonds, and said counties, city, or town shall not be allowed to plead, in any suit brought to recover the principal or interest of such bonds, that the same are usurious, irregular, or invalid in consequence of the informalities cured by this act.

"SEC. 3. That all bonds heretofore issued by Lee and Davis counties for subscriptions to railroads, in pursuance of any vote by the people of said county, city, or town, heretofore had, shall be valid and of full legal and binding force and effect, notwithstanding any informality or irregularity in the submission of the question to the vote
52 of the people, or in taking of the vote authorizing the subscription to such railroads and the issuing of such bonds."

And relator insists that, by reason of the premises, said judgment is a valid lien upon the taxable property in said city of Keokuk, and that the city council should be required to levy and collect a tax upon said property, in the same manner that the other annual taxes of the city are levied and collected, and to apply the proceeds in payment of said judgment. Relator further states that on the 21st of November, 1864, he, by his attorney, made a personal demand upon the city council of said city, then in session in the city council chamber in said city, that they should immediately levy and cause to be collected the said taxes which were necessary to pay off said judgment, interest and costs; that, after considerable deliberation and discussion respecting said demand, said council failed and declined to comply with said demand, alleging that they were enjoined by order of the supreme court of Iowa from so doing, and that they proposed to contest the right and power of this court to require them to levy and collect said railroad tax in any action which would be brought by relator for that purpose against them, and relator states that
53 the said council have had several meetings since said demand, but have altogether failed, neglected, and refused to levy and collect the tax aforesaid. And relator states that the amount of in-

terest on the bonds of said city amounts to about $81,000, and that said city council has not levied a tax to pay any part of said interest since the year 1858, and that said city has no property or revenue which can be reached on execution, and that relator cannot collect his said judgment, unless this court award him a writ of mandamus to compel the levy and collection of said taxes for the purpose aforesaid. Relator therefore prays (as he has heretofore prayed,) your honors to award him a writ of mandamus, to be issued out of this court, under the seal thereof, directed to and commanding the city council of the city of Keokuk, Iowa, at their next meeting, to levy a sufficient tax upon all the property subject to taxation within the corporate limits of said city, to pay said judgment of relator, had and obtained in this court, with 8 per cent interest, and costs, and to collect the same forthwith, and to pay the same over to relator or to his attorney, H. Scott Howell, and of said
54 writ to make due return, with their doings thereon, unto this court, on the first day of the next July term of this court, to be held on the first Monday of July, A. D. 1865. All of which relator claims, &c., &c., for which he will ever pray, &c.

J. EDGAR THOMSON, *Relator*,
By WOODBRIDGE & GRANT, and
H. SCOTT HOWELL, *his Att'ys.*

Petition for mandamus.

And on the same day, to wit, the 15th day of May, being of the May term of said court, A. D. 1865, in the record of the proceedings in said court in said entitled cause, upon filing said amended information is the following order, to wit:

THE UNITED STATES OF AMERICA, at the relation of J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa.

An information and amended information under oath having been filed in this court by the United States of America, at the relation of J. Edgar Thomson, *against* the said city council of the city of Keokuk, Iowa, now comes the said relator, by his attorney, and on his motion it is ordered by the court that an alternative writ of mandamus issue, under the seal of this court, as prayed for in said information
55 and amended information, returnable on the first Monday of July next:

Now, therefore, these presents are to command you, the city council of the city of Keokuk, in the State of Iowa, at your first regular meeting after this writ shall be served upon you, to levy a sufficient tax upon all the property subject to taxation within the corporate limits of said city, to pay to relator a certain judgment recovered in this court on the 19th day of October, A. D. 1864, at the October term of this court, by said relator, against the city of Keokuk, Iowa, for the sum of five thousand four hundred and twenty-seven dollars

and fifty cents, ($5,427 50,) with 8 per centum interest from said date, and eighty-seven dollars and thirty-five cents costs, and also the costs of this proceeding, which said judgment was recovered upon 108 coupons or interest notes of said city, bearing date March 1st, A. D. 1856, payable to bearer, given for the payment of certain instalments of interest upon the certain bonds of said city, of the same date, for the sum of $1,000 each, payable to the Keokuk, M't Pleasant, and Muscatine Railroad Company, or bearer, twenty (20) years after said date, with interest, payable semi-annually;
56 and, further, that you cause said tax, so to be levied, to be collected and paid to relator or to his attorneys, upon said judgment, and costs, or in default thereof that you, the city council of the city of Keokuk, Iowa, show cause, if any you can, why said acts should not be done by you, and the relief prayed for by relator should not be granted, and that of this writ, and in what manner our commands should be executed by you, you are required to make due return to the justices of this court, on the 1st Monday in July, A. D. 1865. And hereof fail not, under the penalty of the law.

To the United States marshal for the district of Iowa, to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago, in said district, this nineteenth day of May, A. D. eighteen hundred and sixty-five, and of our independence the 89th.

WM. H. BRADLEY, *Clerk.* [SEAL.]

[50-cent rev. stamp, cancelled.]

Marshal's return.

Rec'd a writ, of which this is a true copy, June 6th, 1865. Served the same on the city of Keokuk, by reading the same to Wil-
57 liam Patterson, mayor of the city of Keokuk, Lee county, Iowa, on the 6th day of June, 1865, in the city of Keokuk, Lee county, Iowa. I also served the same writ on the following named persons, members of the board of city council, of the city of Keokuk, Iowa, by reading the same severally to H. B. Ten Eyck, R. H. Gillmore, Edward Mumm, Edmund Yager, Freeman Knowles, J. H. Seaton, William Abett, on the 6th day of June, 1865, in the city of Keokuk, Iowa; I also left with each of them a true copy of this writ, at the same time and place.

For a more full return, see schedule attached, marked A.

A.

I acknowledge due service of this writ upon me.

JOHN W. CLEGHORN.

I also served the writ on John W. Cleghorn, one of the members of the city council of the city of Keokuk, Iowa, by reading the writ to Hannah Cleghorn, his wife, she being a member of his family, and over the age of 14 years, at his usual place of residence in the city of Keokuk, Iowa, on the 6th day of June, 1865; I also left with her a

true copy of the original writ at the same time and place; I also served the writ, of which this is a true copy, on H. K. Love, treasurer of the city of Keokuk, Iowa, by reading same to
58 him, on the 6th day of June, 1865, in the city of Keokuk, Lee county, Iowa; I also left with him a true copy at the same time and place; I also served the same writ on B. S. Merriam, clerk of the city council of the city of Keokuk, Lee county, Iowa, on the 6th day of June, 1865, in the city of Keokuk, Iowa; I also left with him a true copy of the original writ, at the same time and place. I left the original writ, of which this is a true copy, with William Patterson, mayor, in Keokuk, Iowa, June 6, '65.

The above-named persons served compose the entire board of the city council of the city of Keokuk, Lee county, Iowa.

PETER MELANDY, *U. S. Marshal*,
By H. FULTON, *Dept.*

Indorsed: Filed Sept. 29th, 1865.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the 13th day of October, A. D. 1865, said defendant, by its attorney, filed in said clerk's office its answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of def'ts.

United States of America, circuit court of the United States for the northern district of Illinois.

59 *Answer.*

UNITED STATES, on the relation of J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK.

Now come the city council of city of Keokuk, defendants, and for answer to the alternative writ of mandamus heretofore issued, say—

1. They admit said city of Keokuk is a municipal corporation within the State of Iowa, and relator is a citizen of the State of Pennsylvania.

2. Def'ts admit that relator brought suit against said city of Keokuk as a municipal corporation in circuit court of United States for the district of Iowa, and that said suit was transferred to this honorable court, and judgment obtained against said city of Keokuk, at the time and for the amount stated, and that subsequently thereto relator has demanded of these def'ts that they should levy and cause to be collected a tax for the payment of said judgment, and that said bonds and coupons were issued in pursuance of said acts and ordinances of city of Keokuk.

And for further answer defendants, the city council of the city of Keokuk, say:

60 3. They admit that they have not levied a tax to pay the said judgment or the coupons upon which the same was obtained.

4. But defendants say, further, that they have been and are ready, willing, and well disposed to obey all rules, orders, and mandates upon them by this court, and they have to show why they have not levied and caused to be collected and paid to relator a tax upon the taxable property in the said city of Keokuk, to the amount of his, relator's, judgment, the causes following, to wit:

On the 24th day of August, A. D. 1863, def'ts were about to proceed to levy and collect a tax for the payment of the interest on said bonds and other similar bonds, and that a petition in equity was filed in the district court of Lee county, Iowa, by H. B. Ten Eyck and others therein named as pl'ffs, against the mayor of the said city of Keokuk and against these defendants, the city council of the city of Keokuk, and the collector of the said city, to which suit these defendants were made defendants, and were duly served with notice on the 27th day of August, A. D. 1863, as required by the laws of the State of Iowa, which petition alleged the execution and issuing by the said city of Keokuk of the bonds and coupons in relator's petition described, and upon which he recovered judgment, and of

61 certain other bonds, and alleged that they, the pl'ffs, in said suit, were the owners of property in said city subject to taxation for municipal purposes, and that they brought said suit for themselves and other citizens, also property holders in said city, and having an interest in the subject-matter of said suit, but too numerous to be joined by name as pl'ffs in said cause; which said petition in equity further alleged that said bonds and coupons had been delivered to said Keokuk, Mount Pleasant, and Muscatine Railroad Company, and by them assigned to 3d parties, who were innocent holders, and further alleged that said city council had no authority in law to execute or issue the said bonds, and that the same were and are absolutely null and void, and that the laws of the State of Iowa, and the ordinances of the city of Keokuk, under which said bonds and coupons were issued, and which are set forth by relator, and under which he claims relief, are and were unconstitutional and void; a copy of said petition in said cause is filed herewith, and hereby referred to and made a part of this answer, for a more full and particular statement of the matters and things and the several allegations therein contained.

Def'ts state that the said petition contained a prayer for an injunction to restrain these def'ts and the other def'ts therein

62 named from levying or collecting any tax or assessment upon any of the property, real or personal, within the said city subject to taxation for municipal purposes, for the payment of the principal or interest of the bonds in relator's petition described, and on which relator recovered said judgment.

Def'ts further state that on the 21st day of August, A. D. 1863, and prior to the bringing of the suit in which relator recovered judgment, upon application to the Hon. George G. Wright, one of the judges of the supreme court of the State of Iowa, an order for

an injunction was made by the said judge, in accordance with the prayer in said petition, upon the clerk of the said district court of Lee county, Iowa, and upon the 9th day of October, A. D. 1863. a writ of injunction was duly issued by the clerk of the said court, and the same was served upon these defendants, enjoining and restraining these def'ts, and their successors in office, and the mayor and collector of the said city of Keokuk, from levying or collecting any tax upon any property within the said city of Keokuk, for the payment of the principal or interest of said bonds, or any of them, and from doing any others acts therein, copy of which order for and writ of
63 injunction are filed herewith and made a part of this answer.

Def'ts state that they appeared, by counsel, and filed a demurrer thereto, and contested the right of pl'ffs in the said cause to the said junction and to the relief by them claimed, and that such proceedings were had in the said cause that on the 19th day of September, A. D. 1863, the pl'ffs in said cause recovered and obtained a decree in the said district court making perpetual the preliminary injunction before granted, and perpetually restraining these defendants from levying or collecting any tax within said city for the payment of said bonds, or the interest thereon, described in relator's petition, copy of which decree is filed herewith and made a part of this answer.

Def'ts state that afterwards they appealed the said cause to the supreme court of the State of Iowa, to the October term thereof, and such proceedings were had in said cause in said court that upon the ninth day of December, A. D. 1863, the judgment and decree of the district court were affirmed, copy of the record of which court is filed herewith and made a part of this petition.

Def'ts state that, by reason of the said proceedings, they have been, and are perpetually, enjoined and restrained by the dis-
64 trict court of Lee county, Iowa, from levying and collecting any tax to pay the principal or interest of said bonds upon which relator has recovered judgment, and that the said order and injunction of the said district court has been affirmed by the superior court of the State of Iowa, which judgment and decree are in force and unreversed, and that these def'ts have no right or authority to levy or collect any tax for the payment of said bonds or the interest thereon, or for the payment of the said judgment recovered by the relator against the said city of Keokuk.

Def'ts state that if they should proceed to obey the mandate of this court in the alternative writ of mandamus contained, and proceed to levy and collect the tax therein ordered for the payment of relator's judgment, they would thereby be guilty of contempt of the said district court of Lee county, Iowa, and of the supreme court of Iowa, and of the order and injunction of the said court, and would be arrested under the order and warrant of the said court, and by reason of the premises; though well disposed towards this honorable court, they are wholly and utterly unable to levy or collect the said tax, or to do as by said writ commanded.

65 *Count No. 5.*—Def'ts, for further answer, say that there was and is no law authorizing and empowering the said city of Keokuk to execute and issue the said bonds, and that all the laws and ordinances under which said bonds and coupons were issued, set forth in the petition of relator, have been declared unconstitutional, null, and void by the supreme court of the State of Iowa, and the said bonds have been declared void and of no binding force or validity by the said supreme court, and under the reported decisions of the supreme court of Iowa, where the said bonds were executed and issued, made before the said judgment obtained in this court by relator, they were, and have been, and now are, held and declared to be null and void, and not binding upon the said city of Keokuk.

Defendants therefore pray the court that the said rule against them may be discharged, and that they be dismissed with their costs herein expended.

H. STRONG,
Att'y for City Council of City of Keokuk.

STATE OF IOWA, *Lee county, ss:*

66 I, William Patterson, as mayor of the city of Keokuk, Lee county, and State of Iowa, being first duly sworn, on oath state that I am mayor of the said city of Keokuk and president of the city council of the said city, and knowing to the truth of the facts stated in foregoing answer by and for the city council of the said city, and am authorized and instructed by the said city council to make this affidavit, and that the facts stated and allegations contained, and that the matters and things set forth in the said answer to the alternative writ of mandamus, are true, as I verily believe.

Witness my hand and the seal of said city, this 5th day of October, A. D. 1865.

WM. PATTERSON,
Mayor of the City of Keokuk and President of the City Council of City of Keokuk.

STATE OF IOWA, *Lee county:*

Subscribed and sworn to this 15th day of October, A. D. 1865, before me, Edward Mumm, a notary public, by William Patterson, mayor of the city of Keokuk. Witness my hand and notarial seal on said day last above named.

[SEAL.] EDW'D MUMM,
Notary Public, Lee County, Iowa.

STATE OF IOWA, *Lee county;*

67 Subscribed and sworn to by William Patterson, mayor of the city of Keokuk, before me, this 10th day of October, A. D. 1865. Witness my hand and the seal of said court.

[SEAL.] D. H. L. SUER,
Clerk of the District Court, Lee County.

Indorsed: Filed Oct. 13th, 1862.

WM. H. BRADLEY, *Cl'k.*

Transcript from Lee co.

On the same day, to wit, the 13th day of *of* October, A. D. 1865, said defendant, by its attorney, filed in said clerk's office a transcript of a record from the district court of the county of Lee, in the State of Iowa. Which said transcript is in words and figures following, to wit:

STATE OF IOWA, *County of Lee:*

In the district court of the 1st judicial district, held at Keokuk, State and county aforesaid. His honor, Francis Springer, judge, presiding.

Be it remembered, that heretofore, to wit, on the 24th day of August, A. D. 1863, a petition was filed in the above-named court, in words and figures following, to wit:

68 H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, Uriah Raplee, pl'ffs,
vs.
THE MAYOR and CITY COUNCIL OF THE CITY of Keokuk and the collector of said city, def'ts.

Your petitioners, H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, Uriah Raplee, pl'ffs, herein reprsent; that they are citizens and residents of the city of Keokuk, Lee county and State of Iowa, and are the owners of property, real and personal, therein subject to taxation.

Pl'ffs for themselves, and other citizens too numerous to be joined in this suit, further state that heretofore, to wit, on or about the 1st day of January, A. D. 1856, the city council of Keokuk, a municipal incorporation existing under the laws of the State of Iowa, by resolution of the said city council, subscribed 400,000 dollars to the capital stock of the Keokuk, Fort Des Moines and Minnesota Railroad Company, an incorporation existing under the laws of the State of
69 Iowa, to enable the said company to construct a railroad from the city of Keokuk, in Lee county, to the city of Fort Des Moines, in Polk county, in said State aforesaid.

Pl'ffs further state that the mayor of the said city did, in pursuance of a resolution of the city council of said city, *did* execute and issue and deliver to said railroad company, in payment of said subscription, 400 bonds, in the name of said city, of 1,000 dollars, of said date, payable 20 years from date, with 8 per cent. per annum, interest payable semi-annually, according to certain interest coupons attached thereto; all of which bonds, except 2, are outstanding and unpaid.

2d. Pl'ffs further state that the said city council of said city did, on or about July 1st, 1856, subscribe, in name of said city, one hundred thousand dollars to the capital stock of the Mississippi and Wabash Railroad Company, a corporation existing under the laws of the

State of Illinois, to aid in building a railroad in said State of Illinois, and did execute therefor, through the mayor of the said city, the bonds of the said city, being one hundred bonds of one thousand dollars each, payable 20 years from date, with 8 per cent. interest per annum, payable simi-annually, according to the tenor and
70 effect of certain interest coupons thereto attached; which bonds are wholly outstanding and unpaid.

3d. And the said city council of said city did, by resolution of said board, March 1st, 1856, in behalf of said city, subscribe one hundred thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscantine Railroad Company, an incorporation existing under the laws of the State of Iowa, to aid said co. in building a railroad from the city of Keokuk, Iowa, to the city of Muscatine, Iowa, and did, in the name of said city, through the mayor thereof, execute and deliver to said railroad company 100 bonds, of 1,000 dollars each, payable 20 years from date, to said R. R. co. or bearer, with 8 pr. cent. pr. annum interest, according to certain interest coupons attached thereto; which bonds are yet outstanding and unpaid.

4. Pl'ffs further state that the city council of said city did, July 3d, 1857, through the mayor of said city, and in the name of the said city, execute and deliver to said Mississippi and Wabash Railroad Co. 50 other bonds of 1,000 dollars each, to aid in building said road, and in payment of further subscription of stock thereto; 16 of said bonds payable Sept. 1, 1859, and 16 of them payable Sept. 1st, 1861,
71 and 18 of them payable Sept. 1st, 1863, to said railroad co. or bearer, and all drawing interest at 8 pr. cent. pr. annum, as pr. interest warrants or coupons attached, and none of said bonds have been paid and are all outstanding.

5. Pl'ffs further state that the city council of the said city did, on the 1st day of May, 1857, in the name of said city, by her mayor, execute, issue, and deliver to the said Keokuk, Fort Des Moines, and Minnesota Railroad Co. 150 other and additional bonds of 1,000 dollars each, in payments of a subscription to the capital stock of said railroad company, and payable, 50 of them in one year, 50 of them in 2 years, and 50 of them 3 years from date, with 10 p'r cent. interest p'r annum, payable semi-annually, according to tenor and effect of certain interest coupons thereto attached, which bonds are wholly outstanding and unpaid.

Pl'ffs state that all of the said bonds hereinbefore described, said bonds and coupons have been assigned by the said several railroad companies to which they were issued, and are now in the hands of third persons, who bought the same in open market, before maturity, for a valuable consideration, and that the holders of said bonds are unknown to pl'ffs, and are too numerous to be made parties to
72 this suit.

6. Pl'ffs further state that the city council of said city had no authority to make the said subscription to said railroad companies, or any of them, nor to execute or issue or deliver to them, or any of them, the said bonds of said city, with the coupons annexed, in the name of said city; that the said city received no consideration for the

said bonds or coupons except certificates of stock in the said several railroad companies to an amount equal to the bonds issued; that the said railroad companies were organized and formed to construct railroads without the limits of said city, and said road companies are private corporations for pecuniary profit, in no way connected with the city, and from which said city derives no profit or emoluments.

7. That said city of Keokuk is a municipal, and had no authority under the charter to construct railroads without her corporate limits, or to issue bonds to aid in the construction of any of the said railroads.

8. That said bonds were executed and issued by the proper officers of said city, under the direction of said city council, and in
73 pursuance of a resolution thereof, without authority of law, and were and are absolutely void; that the issuing of the said bonds was a fraud upon the rights of pl'ffs; that the several acts of the legislature of the State of Iowa authorizing the issue of the bonds described in the said counts of pl'ffs' petition, being an act entitled

, and approved , and the acts of legislature of said State curing, establishing, and making legal and binding the said bonds described in said counts of this petition, being an act entitled an act , and approved , to which acts reference is hereby made, were and are null and wholly unconstitutional and void, and did not authorize the issuing of the said bonds, or any of them, or legalize or make binding the said bonds, or any of them, which had been issued.

9. Pl'ffs further state that the city council of the said city have levied a special tax of one per cent. upon the assessed value of all the taxable property, real and personal, within the limits of the said city subject to taxation for State and county purposes, according to the assessment made by the city assessor for the year A. D. 1863, to be applied towards the payment pro rata of the interest due
74 on said bonds, and the clerk of the said city, in pursuance of a resolution of said city council, has made out a tax list of all of the property in said city, including that of your petitioners, in accordance with the said assessment and levy.

10. Pl'ffs further state that the collector of said city, in pursuance of a resolution of the city council of said city, is now about to collect the said special tax for the payment of interest upon said bonds, and is about to proceed to advertise and sell, under the laws and ordinances of the said city of Keokuk, all of the property, real, personal, and mixed, within the limits of said city subject to taxation, including the property of your petitioners, for the payment of the said special tax, which under the laws and ordinances of said city has become delinquent.

11. Pl'ffs state that the said bonds, issued as aforesaid in the name of the said city for subscription of stock to said railroad companies without authority of law, amount now, with the accumulated unpaid interest, to over one million dollars, which is a great

and ruinous burden and incumbrance upon the property of your petitioners lying within the said city, and upon the property of all
75 the citizens of said city lying within the limits thereof; that unless restrained by your honorable court the said city collector will proceed to advertise and sell the property of your petitioners, and pay the said special tax levied as aforesaid, by which your petitioners and all other property holders will sustain great loss and damage, and your petitioners are without remedy at law in the premises.

12. Pl'ffs further state that the said city council and mayor of the said city are about and intend and threaten to proceed from year to year to levy a further and additional special tax each year upon all of the taxable property in said city, for the payment of the principal and interest of the said bonds as they mature, unless restrained from so doing by your honorable court, and to sell the property of pl'ffs and other property holders for that purpose, by which pl'ffs and others will sustain further and additional loss and damage.

Pl'ffs state that the said city council have no authority to levy any tax for the payment of principal or interest upon said bonds, and the collector of said city has no authority in law to collect said tax, and the taxable property of your petitioners and others in said city
76 should not be made liable for the payment of said tax.

Wherefore pl'ffs make the said city council of said city and the mayor and collector of said city defendants herein, and pray that they be required to answer this petition; and pl'ffs further pray that the collector of the said city be perpetually enjoined from collecting said tax or any tax for the payment of said bonds or the interest thereon, and from advertising or selling any of the taxable property within the said city for that purpose; that the city council and mayor of the said city, and their successors in office, be perpetually enjoined from levying any special or general tax or assessment upon any of the taxable property within the limits of the said city for the payment of the principal or interest of the said bonds, and that each and all of the said defendants and their successors in office be restrained and forever enjoined from doing any act or thing in or towards levying or collecting any tax or assessment, general or special, upon the taxable property in said city, for the payment of the principal or interest upon said bonds or any of them,
77 and from receiving or collecting any tax for that purpose, and that the levy of the said special tax be declared illegal, null, and void, and no lien upon any of the property subject to taxation within the limits of the said city, and said property be declared free and clear of the lien of said tax, and that to this end a writ of injunction issue, which, upon final hearing, your petitioners pray may be perpetual on behalf of pl'ffs and all other property-holders of said city, upon said defendants and their successors in office, and for other relief equitable in the premises.

RANKIN & McCRARY,
Att'ys for Petitioners.

STATE OF IOWA, *Lee county, ss:*

I, H. B. Ten Eyck, one of the pl'ffs in the above-entitled suit, being duly sworn, on oath state that I believe the allegations contained in foregoing petition are true.

H. B. TEN EYCK.

STATE OF IOWA, *Lee county:*

Subscribed and sworn to by H. B. Ten Eyck, before me and in my presence, this 20th day of August, A. D. 1863.

78 Witness my hand and notarial seal.

J. D. SPRINGER, *N. P.* [SEAL.]

Following is an order allowing the injunction, to wit:

STATE OF IOWA, *ss:*

Let the writ of injunction issue as prayed for, the petitioner giving bond in the sum of ten thousand dollars ($10,000) to the approval of the clerk of the district court.

Keosauqua, Aug. 21st, 1863.

GEO. G. WRIGHT,
Judge Supreme Court.

To the clerk district court, Lee county, Iowa.

And afterward, to wit, on the 24th day of August, a bond was made, in words and figures following:

Know all men by these presents that we, H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee, principals, and A. L. Connable, sureties, are held and firmly bound unto the city of Keokuk and the collector, &c., in the penal sum of ten thousand dollars, for the payment of which we obligate ourselves.

The condition is that the said principals have filed their petition in chancery in the office of the clerk of the district court of Lee

79 county, Iowa, at Keokuk, against the mayor and city council of the city of Keokuk, and the collector, praying an injunction to prevent the collector of taxes to pay the interest on certain railroad bonds, &c., and an injunction has been allowed:

Now, if the said pl'ffs will pay all the damages that defendants may sustain by reason of this wrongful allowance of said injunction, and save said defendants harmless from all damages in case said injunction is dissolved, then this obligation is void; otherwise, in full force.

Witness our hands August 24, 1863.

H. B. TEN EYCK.
C. H. PERRY.
J. B. HOWELL.
J. W. CLEGHORN.
A. L. CONNABLE.
R. B. OGDEN.
U. RAPLEE.

Approved and Filed Oct. 9th, 1863.

CHARLES DORR, *Cl'k D. C.*
By EDW'D MUMM, *Dep'y.*

And a writ of injunction was issued of date October 9th, 1863, as follows:

STATE OF IOWA, *Lee county, ss:*

To the mayor and city council of the city of Keokuk and the
80 collector of said city, your agents, attorneys, and servants, and each and every of them:

Whereas H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee have filed their bill in chancery in our court, within and for the county of Lee, against you, the said mayor and city council of the city of Keokuk and the collector of said city, touching the matters therein complained of, and which bill is therein pending; and whereas said H. B. Ten Eyck *et al.* above named have obtained the allowance of an injunction from the Hon. Geo. W. Wright, judge of the supreme court of Iowa, as prayed for in said bill, and the said H. B. Ten Eyck *et al.* having filed a bond, with approved security, as required by the order of allowance:

We, therefore, in consideration of the premises, do strictly command and enjoin you, and your agents, attorneys, and servants, and all and every of you, that you, and every of you and your successors in office, do altogether desist from levying any special tax or general tax or assessment upon any of the taxable property within the limits of the city of Keokuk for the payment of the principal and interest of certain bonds mentioned in said bill, (as railroad
81 bonds,) and that each and all of you, and your successors in office, be restrained and forever enjoined from doing any act or thing towards levying or collecting any tax, general or special, or assessment upon the taxable property of the said city, for the payment of the principal or interest upon said bonds, or any of them, and from receiving or collecting any tax for that purpose, under the penalty of the law hence ensuing.

Witness Charles Doerr, clerk of the district court in and for said county, this 9th day of Oct., 1863.

CHARLES DOERR, *Clerk*,
By EDW'RD MUMM, *Deputy*.

Upon which is indorsed the return of the sheriff, in words and figures as follows:

This writ came into my hands on the 12th day of April, 1864, and on the same day I served the same on A. G. Richardson, collector of city of Keokuk, C. F. Davis and Wilkersham, members of the city council of the city of Keokuk, by reading the same to each of them in the city of Keokuk, Lee county, Iowa; and on the 13th day of April, 1864, I served the same on John Cleghorn, George Montague, and Cicero Hughes, members of the city council of the city of Keokuk, and J. M. Hiatt, mayor of said city, Lee county, Iowa, by reading the same to each of them, in the city of Keokuk, Lee
82 county, Iowa; and on same day I served the same on J. H. Seaton and Wm. Abbott, members of city council of said city

of Keokuk, by reading the same to each of them, in the city of Keokuk, Lee county, Iowa. H. B. Ten Eyck, a member of said city council, cannot be found in my county.

ISRAEL ANDERSON, *Sheriff Lee county, Iowa.*

I, also, on the 18th day of April, 1864, at 9 o'clock p. m., served the within writ on the mayor and city council of the city of Keokuk, in session, the mayor and city councilmen being all present, by reading the same to them personally, while they were in session in the city of Keokuk, Lee county, Iowa.

ISRAEL ANDERSON, *Sheriff Lee county, Iowa.*

And afterwards, an original notice was issued and served in words and figures, as follows:

[50-c. U. S. stamp.]

STATE OF IOWA, *Lee county, ss:*

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleighorn, Uriah Raplee,

vs.

83 THE MAYOR AND CITY COUNCIL OF THE city of Keokuk, and the collector of said city.

You are notified that there is now on file in the office of the clerk of the district of Lee county, Iowa, at Keokuk, the petition of H. B. Ten Eyck, Robert Ogden, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee, claiming against the defendants, the mayor and city council of the city of Keokuk, and the collector of said city, an injunction restraining the defendants from levying and collecting taxes of the plaintiffs, and out of their property in the city of Keokuk, and of the citizens and residents of Keokuk, Lee county, Iowa, to pay the interest or principal of certain bonds issued by said city to certain railroad corporations in the petition described. Said petition alleges that said bonds were issued without the authority of law, and that the defendants are proceeding to collect the interest due on said bonds by distraining, &c. Said petition prays for a perpetual injunction and for general relief.

Unless you appear and answer said petition on or before the 2nd day, at noon, of the September term, 1863, of said court, com-
84 mencing on the first Monday of September, a decree will be taken as if confessed, and in accordance with the prayer of the petition.

RANKIN & MCCRARY, *Atty's for Pl'ffs.*

Upon this notice is indorsed the following return of the sheriff:

This notice came into my hands August 27th, 1863, and I served the same on the mayor of the city of Keokuk, by reading same personally to George B. Smyth, mayor of said city, and by delivering to him a true copy thereof in Keokuk, Lee co., Iowa, Aug. 27th, 1863. Served same also on the collecter of said city, by reading same per-

sonally to A. G. Richardson, the collector of said city, and by delivering to him a true copy thereof, in Keokuk, Lee co., Iowa, August 27th, 1863. Served same also on the city council of the city of Keokuk, by reading same personally to R. S. Merriams, clerk of said city council, and by delivering to him a true copy thereof, in Keokuk, Lee county, Iowa, August 27th, 1863.

N. G. HEDGES, *Sheriff Lee Co., Iowa,*
By D. B. SMITH, JR., *Dep'y.*

And afterwards, to wit, on the 24th day of August, A. D. 1863, a demurrer was filed in words and figures following:

85 *Demurrer by defendants.*

District court of Lee county, Iowa, at Keokuk.

H. B. TEN EYCK and OTHERS, pl'ffs,
vs.
THE MAYOR OF CITY OF KEOKUK and OTHERS, def'ts.

Now come the defendants, the mayor of the city of Keokuk and the city council and collector of city of Keokuk, by Henry Strong, their attorney, and demur to the petition of pl'ffs, and state the said petition does not state facts sufficient to constitute a cause of action, and entitle pl'ffs to the relief claimed.

1st. Petition shows that said bonds executed and issued in name of the city of Keokuk were regularly issued by the proper officers of the said city, in pursuance of a resolution of the city council of said city, and in payment of a subscription by said city to the railroads named.

2d. The said city of Keokuk, through her proper officers, had a right to subscribe to the capital stock of said railroads, and to issue the bonds of the city in payment thereof, and the city council of said city have a right to levy a tax upon the taxable property in said city in payment of the interest and principal of said bonds, as they
86 mature, and the city collector is authorized and legally bound to collect the said tax after the same has been levied.

3. Under the constitution and laws of the State of Iowa the said city of Keokuk, through her proper officers, had full authority to execute and issue the said bonds, and pl'ffs' petition shows that said city did receive a valuable consideration for the issuing of said bonds in an equal amount of certificates of stock of the several R. R. companies to which said bonds were issued.

4. Pl'ffs' petition shows upon its face that said bonds are now in the hands of innocent holders, who bought them before maturity for valuable consideration, and being in the hands of such holders they are binding upon said city.

5. Pl'ffs' petition shows that said bonds described in the counts of their petition were ratified and legalized by an act of the general assembly of the State of Iowa, and are, therefore, legal and binding upon said city.

6. Pl'ffs' petition shows that the bonds described in the counts of their petition were authorized by an act of the general as-
87 sembly of the State of Iowa, and were issued in pursuance of said act, and are therefore legal and binding upon said city.

7. The petition of pl'ff shows that said bonds are legal, valid, and binding upon said city, and the property of pl'ffs and other persons in said city is liable to be assessed and taxed in the manner prescribed by law for the payment of the same as they shall mature.

8. There is no equity in petition of pl'ff as shown upon its face; and petition shows that pl'ffs are not entitled to relief claimed, and def't prays that the injunction granted be dissolved and def'ts' bil dismissed.

HENRY STRONG, *Att'y for defendants.*

And afterwards, to wit, on the 19th day of September, A. D. 1863, a decree embodying a bill of exception was filed as follows:

H. B. TEN EYCK, ROBERT OGDEN, J. B. Howell, C. H. Perry, Arthur Walcott, John W. Cleghorn, and Uriah Raplee,
vs.
THE MAYOR AND CITY COUNCIL OF THE CITY OF Keokuk, the collector of said city, &c.

This cause came up for hearing on the petition of plaintiffs'
88 property-holders of the city of Keokuk and representatives of all the holders of property in said city, and the demurrer of defendants, the former represented by Rankin and McCrary, their attorneys, and the latter by Henry Strong, their attorney, and the court being advised in the premises finds that said city, through its mayor and council, about to levy a heavy tax on the taxable property of the plaintiffs and other property-holders to pay the interest on certain railroad bonds in the petition described. The court further finds that said bonds are void and of no binding obligation, they having been issued without the authority of law. The court therefore overrules the demurrer of, and the defendants having decided to stand on their demurrer and not answer, the court orders, adjudges, and decrees that the temporary injunction allowed in this case to be made perpetual.

It is further ordered, adjudged, and decreed that the defendant, the city of Keokuk, through its officers aforesaid, levy no taxes for the purposes specified in the petition: and that the collector of said city and his successors collect no tax for the payment of any of the railroad bonds described or the interest on the same.

89 The defendants excepted at the time to the several rulings, orders, and decrees, and asked the court to sign this as a bill of exceptions, and decree, which is done.

Sept. 19, 1863.

FRANCIS SPRINGER, *Judge.*

And afterwards, on the 2d day of October, A. D. 1863, an appeal was filed in this case, as follows:

District court, Lee county, Keokuk, Iowa.

H. B. TEN EYCK and OTHERS
vs.
MAYOR OF CITY OF KEOKUK and OTHERS.

To H. B. Ten Eyck and others, pl'ffs, or Rankin and McCrary, their att'ys, and Chas. Doerr, clerk of said court:

You are hereby notified that defendant has appealed from the judgment of said district court in the above-entitled cause to the supreme court of State of Iowa.

HENRY STRONG, *City Att'y.*

We hereby acknowledge service of foregoing notice of appeal, and waive time, and agree that this case shall be heard at October term, A. D. 1863, of supreme court at Davenport.

Oct. 1st, 1863.

CHAS. DOERR, *Clerk D. C.*
By EDW'D MUMM, *Dep'y.*

RANKIN & MCCRARY, *Att'ys for Pl't'ffs.*

90 STATE OF IOWA, *Lee county:*

I, D. H. Le Suer, clerk of district court, State and county aforesaid, hereby certify that the foregoing is a true transcript of the papers and record entries made in the above-entitled cause.

Witness my hand and seal of the court, this 4th day of March, A. D. 1865.

[SEAL.] D. H. LE SUER, *Clerk.*

[5-ct. rev. stamp, cancelled.]

STATE OF IOWA, *County of Lee, ss:*

I, Francis Springer, sole judge of the district court of the first judicial district, (in which is the county of Lee,) hereby certify that D. H. Le Suer, whose genuine signature appears to the foregoing certificate was at the dates thereof, and still is, clerk of the district court within and for the county of Lee, duly elected and qualified, that the seal by him thereto affixed is the seal of said court, and that his attestation is in due form.

In testimony whereof, I hereto subscribe my name this 4th day of April, 1865.

FRANCIS SPRINGER, *Judge.*

[5-ct. rev. stamp, cancelled.]

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Clerk.*

91 On the same day, to wit, the 13th day of October, A. D. 1865, said defendant, by its attorneys, filed in said clerk's office its transcript of a record from the supreme court of Iowa; which said transcript is in words and figures following, to wit:

Transcript supreme court of Iowa.

At a supreme court of the State of Iowa begun and holden at the city of Davenport, on the 6th day of October, A. D. 1863.

Present: The Hon. Caleb Baldwin, C. J.; George G. Wright, Ralph P. Lowe, judges.

Among other the following proceedings were had, to wit:

H. B. TEN EYCK
vs.
THE MAYOR AND CITY COUNCIL OF KEOKUK, app'l't. } Appeal from Lee co.

This day this cause, coming on for hearing, was submitted to the consideration of the board, with leave to file written arguments.

And afterwards, to wit, on the 9th day of January, 1864, at the Dec. term, 1863, at the city of Des Moines, the following proceedings were had and ordered to be made of record, to wit:

92 *Appeal from Lee county.*

H. B. TEN EYCK
vs.
THE MAYOR AND CITY COUNCIL OF KEOKUK, app'l'ts.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the judgment and proceedings of the court below herein and file their written opinion.

It is therefore considered and adjudged by the court that the judgment of the court below be affirmed, and that a writ of prosedendo issue accordingly, and that the appellee have and recover of and from the appellants his costs in this behalf, laid out and expended at this court taxed at $, and that execution issue therefor.

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true, full, and complete copy of the record entries in the case to which it refers, as full, true, and complete as the same now appears of record in my office.

Witness my name and the seal of said court hereto affixed.

93 Done at the city of Des Moines this 15th day of June, 1865.

[SEAL.] LEWIS KINSEY, *Clerk.*

[5-ct. rev. stamp, cancelled.]

STATE OF IOWA, *Supreme court, ss:*

I, George G. Wright, chief justice of the supreme court of Iowa, hereby certify that Lewis Kinsey, whose genuine signature is affixed to the above and foregoing certificate, was at the time of signing the same clerk of the supreme court within and for the State of Iowa, and that full faith and credit are due to his official acts as such clerk.

Given under my hand this 15th day of June, A. D. 1865.

GEO. G. WRIGHT,
Ch'f Justice Supreme Court, Iowa.

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On the same day, to wit, the 13th day of October, A. D. 1865, came said relator, by his attorney, and filed in said clerk's office his demurrer in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

94 United States circuit court for the northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thompson,
vs.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, respondents.
} Mandamus.

Demurrer of relator to the answer and return of respondents:

And now comes relator in the above-entitled proceedings and demurs to the answer and return of the respondents to the alternative writ of mandamus, and says the matters and things set up herein, are insufficient in law to bar relator of the relief prayed for herein in that relator was not made a party to the injunction proceedings had in the supreme court of Iowa at the suit of H. B. Ten Eyck *et al. vs.* the respondents herein.

2. That court had no jurisdiction of the proper parties, the bondholders, and none of them were made defendants to said bill of injunction.

3. Because, as it appears from the bill in said injunction suit, (made part of respondent's return herein,) said decision of the supreme court of State of Iowa declaring said railroad bonds invalid and un-
95 constitutional, and perpetually enjoining the collection, same was had long after the execution and sale of said negotiable bonds to insolvent purchasers, and that this reversal earlier settled decisions of the same supreme court. And this court, therefore, is not bound in law and will not follow the last decision of the State court in such a case.

4. Because this court, since the decision of Ten Eyck *et al. v.* city council of the city of Keokuk in supreme court of Iowa, has held the same bonds thus enjoined to be good and valid, and has given relator judgment thereon, and this court will not now withhold the remedy when it has established the right of relator upon said bonds.

5. Because it is not competent for the State court of Iowa to oust this court of its jurisdiction to enforce its own judgments, and no decree of the supreme court of Iowa to which relator was not made a party is of any valid or binding force to bar relator from using the process of this court to collect his judgment.

6. Because said injunction suit in the State courts was instituted and said decree was obtained by consent and collusion of respondents and to forestall action for the enforcement of the collection of
96 said railroad bonds in the United States courts.

Whereupon relator prays the award and issuance of a peremptory writ of mandamus herein, &c.

H. SCOTT HOWELL, *Att'y for Relator.*

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Cl'k.*

On the same day, to wit, the 13th day of October, A. D. 1865, came said parties, by their attorneys, and filed their stipulation in said entitled cause; which said stipulation or agreement is in words and figures following, to wit:

Agreement.

U. S. circuit court, northern district of Ill.

U. S., *ex rel.* J. Edgar Thomson, *v.* City Council of Keokuk. } Mandamus.

It is hereby agreed by the parties to the above-named action that either party may read as evidence on the trial of said action any of the ordinances, city charter, amendments thereto, and laws of the State of Iowa contained in a printed volume published by authority of the city council of the city of Keokuk, in 1860, entitled
97 "The charter and ordinances of the city of Keokuk (to August 6, 1860,) together with acts of the general assembly relating to the city," &c., without further proof or certificate.

It is further agreed that the record of proceedings in case of Ten Eyck and others *vs.* city of Keokuk may be read in evidence without being certified by a judge of the court.

Sept. 23, '65. H. SCOTT HOWELL, *Att'y for Relator.*
H. STRONG, *City Att'y, Keokuk.*

Indorsed: Filed Oct. 13th, 1865.

WM. H. BRADLEY, *Clk.*

[5 ct. rev. stamp.]

On this day, to wit, the seventeenth day of October, in the adjourned October term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

The United States of America, at the relation of J. Edgar Thomson, *vs.* The City Council of the city of Keokuk, in the State of Iowa. } Petition for mandamus.

This day came J. Edgar Thomson, relator in the above-entitled cause, by H. Scott Howell, his attorney, and came also the respondents, by Henry Strong, their attorney, and this cause came on for hearing upon the demurrer of relator to the answer and re-
98 turn of respondents to the alternative writ of mandamus issued in this cause, and the agreement of parties on file as to ad-

mission of the printed ordinances, &c., and after the hearing of argument therein, and consideration of the premises, the court overruled said demurrer, except as to count number five of said answer to which demurrer is sustained, and relator by his counsel at the time excepts to said ruling. It is thereupon considered and ordered that respondents go hence without day, and that the rule upon them to show cause be discharged, and that they have and recover of the relator their costs in this behalf to be taxed.

On this day, to wit, the seventeenth day of October, A. D. 1865, came said relator, by his attorneys, and filed in said clerk's office his bill of exceptions in said entitled cause, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

99 United States circuit court, northern district of Illinois.

UNITED STATES OF AMERICA, *ex rel* J. Edgar Thomson, relator.
v.
THE CITY COUNCIL OF THE CITY OF KEOKUK, Iowa, respondents.
} In error.

Be it known that on this seventeenth day of October, A. D. 1865, at the October term of our said court, there came the United States, at the relation of J. Edgar Thomson, by H. Scott Howell and Woodbridge and Grant, his att'ys, and there also came the respondents, the city council of the city of Keokuk, Iowa, by Henry Strong, their attorney, and this cause of mandamus came on to be heard upon the issue joined thereon by the demurrer of the relator to the answer, and return of the respondents to the alternative writ of mandamus issued herein, in connexion with the written agreement of parties on file in this cause, respecting the introduction and consideration of the volume of the printed ordinances of said city, which answer and return of respondents is in words and figures following, to wit:

(Said answer is correctly copied on pages 58 to 93, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*)

100 And which demurrer of relator thereto is in the words and figures following, to wit:

(Said demurrer is correctly copied on pages 93 to 96, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*

And which agreement for the introduction and consideration by the court of the printed volume of the ordinances, &c., of said city of Keokuk is in the words and figures following, to wit:

(Said agreement is correctly copied on pages 96 to 97, inclusive, of this transcript.

WM. H. BRADLEY, *Clerk.*)

And, after argument of counsel, the court, on consideration of the premises submitted thereto, doth sustain the demurrer of the relator

to the paragraph or subdivision of said answer, and return as therein mentioned five (5,) and doth overrule the said demurrer upon each and all other grounds therein set forth.

To which latter ruling of said court overruling said demurrer upon the causes stated, and to each of them, the said relator at the time then and there excepted, and standing upon his said demur-
101 rer, and each and every cause of demurrer therein set out, prays that this his bill of exceptions may be signed, sealed, and made part of the record, which is accordingly done.

DAVID DAVIS. [SEAL.]
THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed Oct. 17th, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 28th day of November, A. D. 1865, came said relator, by his attorneys, and filed in said clerk's office his appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

UNITED STATES OF AMERICA, *ex rel.* J. Edgar Thomson, relator, *vs.* THE CITY COUNCIL OF THE CITY OF Keokuk, Iowa, respondents. } Mandamus in error.

102 Know all men by these presents, that we, J. Edgar Thomson, relator, as principal, and Heman J. Lombant, as security, are hereby held and firmly bound unto the city council of the city of Keokuk, Iowa, respondents, in the above-named suit, in the penal sum of five hundred dollars. To the payment of which well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this first day of November, 1865.

Whereas the above-named J. Edgar Thomson, relator, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled suit, by the circuit court of the United States for the northern district of Illinois. Now, therefore, the condition of this obligation is such that if the above-named J. Edgar Thomson, relator, shall prosecute his writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue in law.

103 J. EDGAR THOMSON. [L. S.]
HEMAN J. LOMBANT. [L. S.]

Sealed and delivered in the presence of us—
W. J. HOWARD.
SAM'L L. CLEMENT.

This bond is approved.

CITY OF PHILADELPHIA, *ss:*

On this first day of November, A. D. 1865, before me, Samuel L. Clement, notary public for the commonwealth of Pennsylvania, residing in the city of Philadelphia, personally appeared the above-named Heman J. Lombant, who, being by me duly affirmed according to law, declares and says that he is worth five hundred dollars over and above the sum of three hundred dollars exempted by law.

HEMAN J. LOMBANT.

Affirmed to and subscribed before me the day and year aforesaid, as witness my hand and seal.

SAM'L L. CLEMENT, *Notary Public.* [SEAL.]

Approved. THOMAS DRUMMOND.

Indorsed: Filed Nov. 28th, 1865.

WM. H. BRADLEY, *Clerk.*

104 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify the above and the foregoing, from pages one to one hundred and three, inclusive, to be a true and complete transcript of the record of all the proceedings which have been had in the cause in said court wherein the United States, on the relation of J. Edgar Thomson, is plaintiff, and the city council of the city of Keokuk, Iowa, is defendant, as appears from the records of said court now remaining in my custody, and that the original writ of error and citation issued herein by the plaintiff in error are hereunto appended to said record or transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said northern district of Illinois, this fourth day of December, A. D. 1865.

WM. H. BRADLEY, *Clerk.*

[5-ct. rev. stamp.]

O

Supreme Court of the United States.

UNITED STATES *ex rel.*, J. EDGAR THOMPSON,
PLAINTIFF IN ERROR,
vs.
CITY COUNCIL OF THE CITY OF KEOKUK, IOWA,
DEFENDANTS IN ERROR.

No. 247, December Term, 1866.

BRIEF AND ARGUMENT BY J. H. CRAIG, ATTORNEY FOR DEFENDANTS IN ERROR.

This is a proceeding in *Mandamus*, to compel respondents to levy a tax to pay a certain judgment obtained by relator against the city of Keokuk, Iowa, in the Circuit Court of the United States for the Northern District of Illinois, upon the coupons of certain railroad bonds issued by the said city in payment of her subscription to the capital stock of the Keokuk, Mt. Pleasant and Muscatine Railroad Company.

This judgment is for the sum of $5,427 50, with 8 per cent. interest and costs of suit. It was obtained on the 19th day of October, 1864, at the October term of said Circuit Court; but the

record does not disclose at what time the suit, on which the said judgment was obtained, was instituted.

The petition in this case was filed on the 14th day of January, 1865. The alternative writ was issued on the 19th of January, 1865. The first service of the writ was made on the respondents on the 17th of February, 1865. This was quashed, and a new service of the alternative writ was made on the respondents on the 6th of June, 1865.

The defense relied on by these respondents, is presented in the 4th count or division of their return to the alternative writ, and the exhibits thereto attached, found on the 26th and 27th pages of the printed record in this case.

The defense thus set forth is briefly to the effect, that respondents had been absolutely and perpetually enjoined from levying said tax, by decree of the District Court of Lee county, Iowa, and the Supreme Court of Iowa, on the petition of seven citizens and tax-payers of Keokuk, filed on behalf of themselves and other citizens of said city, too numerous to join in said suit.

Personal service of notice of this injunction suit was made on these respondents on the 27th day of August, 1863. The final decree of said District Court making the injunction perpetual was rendered on the 19th of September, 1863, thirteen months prior to the date of relator's judgment. The said decree of the District Court, on appeal, was affirmed by the Supreme Court of the State of Iowa, on the 9th of December, 1863. Although the record does not disclose the date of the commencement of the suit on which relator recovered his said judgment; yet the relator's demurrer admits the allegation of the return, that it was commenced after the said injunction was ordered.

A full and complete record of said injunction suit, both in the District Court and Supreme Court of Iowa, is filed with said re-

turn, as a part thereof, showing all the averments of the return more fully and at large.

The relator demurred to the return. This demurrer was overruled by the Circuit Court as to said fourth count or division; and the relator brings the cause to this Court on writ of error.

The record thus presents the question: Do the facts and averments set out in said fourth division of respondent's return to the alternative writ, and appearing at large in the Exhibits filed therewith, constitute a good defense to this proceeding?

In the first place, it is a proposition in accordance with the nature and purposes of the writ of mandamus, with sound reason and common justice, and with all authority, that the writ is never granted ordering officers or parties to put themselves in positive conflict with the order of a Court of competent jurisdiction.

Mandamus is supplemental to all other actions and proceedings, and is never granted where there is any other adequate remedy. It is an extraordinary and summary remedy, allowed in the absence of all others, to prevent a failure of justice. But no Court would be justified in doing an act of positive injustice to innocent officers or parties, even to prevent a failure of justice. It is better to leave parties to the ordinary remedies which the laws provide, even though justice may fail, than to subject innocent persons to injustice and punishment. To give an extraordinary remedy to one person, at the expense of another, who is not to blame, is in palpable conflict with the purpose of the writ of mandamus. It is to do injustice instead of preventing it. The writ is remedial, but to shift an alleged hardship or wrong from one party, and impose it on the shoulders of another who is without fault, is not remedial. It aggravates the hardship, instead of removing it. It makes the writ the instrument, instead of the cure of injustice. The nature and purpose of the writ is, therefore, inconsistent with the idea that it is to be used to command diso-

bedience to the order of a Court of competent jurisdiction; because it would place an innocent officer in the cruel position where he would be compelled to disobey one Court or the other, and in any event suffer the punishment of disobedience.

We are not vindicating here the just rights and authority of the Courts of Iowa, much less their action in this matter. But we are vindicating the conduct of the respondents. We insist that they have not been guilty of any default. They are neither the corporation of the city of Keokuk, nor its tax-payers; but they are officers charged with certain duties, which they have faithfully tried to perform. They were about to levy a tax upon the taxable property in Keokuk to pay the interest coupons on which relator recovered his judgment, when a suit to enjoin them was commenced in the District Court of Lee county, Iowa. They were duly served with process in said suit; a preliminary injunction was ordered against them, prior to the commencement of the suit on which relator recovered his judgment. This the demurrer admits. Respondents were citizens of Iowa. They could not escape the jurisdiction of the said District Court. It had served its process on them. Said suit submitted to that Court a matter which it had jurisdiction to decide. For it will hardly be denied that the said District Court was competent to enjoin the levy and collection of an illegal tax, on property, and by officers, subject to its jurisdiction, at the suit of the owners of such property; and though it might have erroneously held such tax illegal, that would not impair its jurisdiction to decide the question, nor the force of its decree while unreversed. Respondents contested said suit, both in the District Court and Supreme Court of Iowa. If they could have plead the pendency of this proceeding for a writ of mandamus, doubtless the Courts of Iowa would have conceded the jurisdiction to the Courts of the United States; but this respondents could not do, for the petition in this proceeding was not filed in the Circuit Court till the 14th day of

January, 1865, nor the alternative writ served on respondents till the 6th of June, 1865, while the final decree in the injunction suit in the District Court was rendered against respondents on the 19th of September, 1863, and affirmed in the Supreme Court of Iowa on the 9th of December, 1863. Respondents omitted no defense which they should or could have made, to said injunction suit. It was not their fault that relator did not commence this proceeding, nor even his suit for judgment on his coupons, until they had been enjoined. They could not anticipate even that he would sue in the Federal Court.

On the facts stated in the return the respondents stand in this Court without fault, and unless this Court can relieve them from the injunction, it has no right to command them to disobey it. This Court should not command the respondents to disobey the injunction, unless it can protect them in their disobedience. If they obey the mandate of this Court, and are imprisoned for contempt of the injunction, the Federal Courts can grant them no relief. They cannot reverse the decree ordering the injunction, for no appeal lies from the State Court to this Court in such a case. We understand that this point has been decided by this Court the present term. Neither can this Court treat the decree of the State Court as a nullity, as the counsel for relator asks it to do; for the subject matter of that injunction suit was clearly within the jurisdiction of the State Court. Individual citizens of Keokuk invoked the powers of the State Court to protect their property—which was also within the jurisdiction of that Court—from the levy of a tax which they claimed was illegal, and which they charged respondents had levied and were about to levy upon it. Respondents were made defendants and duly served with notice. This surely presents a case within the jurisdiction of the State Court,—a subject matter which the Court had the power to adjudicate, and parties which it had the power to bind by its decision. Whatever may be the effect of that decree on others, it absolutely

binds these respondents; to them it is the law. It is a legal impossibility for them to disobey it, and a legal absurdity for any Court to command them to disobey it. No Court ever did send its mandate to an innocent officer or party commanding him to put himself in direct conflict with the order of a Court having competent jurisdiction over him and the subject matter of such order. No such instance can be found in any decision.

The counsel for relator, after closing his eyes to the obvious application to this case, of the universally recognized rule, which would prevent all conflict between Federal and State Courts in matters of concurrent jurisdiction; and after blindly seeking for some other path to make "a flank movement," in despair of finding one, boldly challenges "the conflict," and invokes the power of the Government. The counsel here opens a fearful range to his artillery. He cuts the Gordian knot in despair of untying it. It was a heroic, but rather lawless spirit, which inspired the words: *Aut inveniam aut faciam viam.* They do not become a Court of Justice. We do not forget the motto: "*Fiat justitia ruat cœlum;*" but it is seldom necessary to overthrow the heavens in order that justice may be done. But if the counsel still insists on "the conflict"—whether it is to be carried on by opposing writs or arms—we protest against these respondents being thrust between the antagonists: or if they are to be thrust forward as a forlorn hope to draw the fire of the State Courts, the counsel is bound to show how the Federal Court can sustain them. As he has failed to show how the respondents can, at the same time, obey two contradictory writs, the one forbidding, and the other commanding the same act, we think that he is bound to show how the Federal Court is to release the respondents if they should be imprisoned for contempt of the injunction; for he has no right to ask this Court to command them to disobey the injunction unless he can show that this Court has the power to protect them in so doing. The remedy, if there is one at all, is the

writ of *habeas corpus*. The law provides no other mode of release from wrongful, or alleged wrongful imprisonment.

But the Federal Courts could not grant a writ of *habeas corpus* in such a case.

In ex parte Cabrera, the petitioner was Secretary of the Spanish legation, and had been arrested and imprisoned under the authoity of Pennsylvania, for forgery. He was brought before the Circuit Court of the United States on a writ of *habeas corpus*. The Court conceded his exemption, but held itself incompetent to discharge him. and that he must seek redress in the State Courts. 1 Wash. C. C. R. 232.

In Taylor's Administrators vs. Carryl, 24 How. 583, this Court in defining the line of division between the jurisdiction of the Federal and State Courts, says:

"The legislation of Congress in organizing the judicial powers "of the United States, exhibits much circumspection, in avoiding "occasions for placing the tribunals of the States and the Union "in collision. A limited number of cases exists, in which a party "sued in a State Court may obtain the transfer of the cause to a "Court of the United States by an application to the State Court "in which it was commenced;" and this Court, in a few well defined cases, by the 25th section of the Judiciary Act of 1789, may revise the judgment of the tribunal of last resort of a State. In all other respects the tribunals of the States and the Union are independent of one another. The Courts of the United States cannot issue an injunction to stay proceedings in any State Court, and the Judiciary Act provides that "writs of *habeas corpus* shall in no case extend to prisoners in jail, unless where they are in custody under or by color of authority of the United States, or are necessary to be brought into Court to testify. "Thus as the law now stands," say this Court, "an individual "who may be indicted in a Circuit Court for treason against the

"United States, is beyond the power of the Federal Courts and "Judges, if he be in custody under the authority of a State. *Ex* "*parte* Doer, 3 How. 103. And signal instances are reported in "verification of the above statement. *Ex parte* Robison, 6 Mc- "Clean R. 335."

The act of 1833, Sec. 7, was not designed to remove any of these landmarks, or to take away any of the immunities of the States, but was only intended to guard against the unwarranted assumptions and usurpations of the States in attempting to obstruct the Federal officers, and those assisting them, in executing the laws of the United States and the process of the Federal Courts. This act was called the "Force Bill." It was passed to meet the attitude of South Carolina on the tariff ques ion. The occasion shows its purpose, namely: to protect Federal officers and those assisting them in the execution of the laws of the United States. See Hurd on Habeas Corpus, page 155, and the cases there discussed.

On *habeas corpus* the Court cannot look behind the sentence of a Court of competent jurisdiction. 3 McClean, 89; 3 Peters, 193. A commitment for contempt is such a sentence. *Ex parte* Kearney, 7 Wh. 38.

The proposition that a peremptory mandamus should not be awarded against a ministerial officer commanding him to disobey the order or decree of a Court having personal jurisdiction over him, and over the subject matter of such order or decree, is not only supported by sound reason, but also by uniform authority. The counsel, while erroneously saying that but two cases are cited in support of the proposition, himself fails to produce a single case or *dictum* in conflict with it. There are none such. This itself is a strong presumption in favor of the proposition.

The case of the Ohio and Indiana Railroad Company vs. the Commissioners of Wyandotte County, 7 Ohio State Reports, 278,

was a proceeding in mandamus to compel the Commissioners to make a subscription to the stock of the Railroad Company. The defense was that the Commissioners had been absolutely and perpetually enjoined from making such subscription, by final decree of the Supreme Court of Ohio, at the suit of John Carey and other tax payers of the said county. The Court held this a good defense and refused the writ.

The counsel in vain attempts to point out any material distinction between the case cited and the present case. He says that the Ohio case "was the *first* suit brought as an original remedy," and—by implication—that this case is the second brought by the relator. It is not perceived how this can make any difference. The counsel fail to show it. And the reason given by the Court for their refusal to grant the writ, would apply without regard to the alleged distinction. The reason given by the Court was, that it was inadmissable and unjust to place the Commissioners, who were not to blame, between two fires, by subjecting them to contradictory orders.

Again: The counsel says that in the Ohio case "the injunction forbade *verbatim et literatim*, the thing asked for by the mandamus," and the suggestion is, that in this case, the injunction forbids the levy of a tax to pay the coupons, while the mandamus asks for the levy of a tax to pay the *judgment* recovered on the coupons. It is not necessary to consume space in showing that this distinction is gratuitous, and rests on no ground of sound reason. It is sufficient to call attention to the fact, which the record discloses, that the injunction was ordered *even before the commencement of the suit in which relator's judgment was obtained;* and that the decree making the injunction perpetual was rendered more than a year prior to the judgment on the coupons. The relator's claim existed in the shape of interest coupons, until long after the consummation of the injunction suit; and the fact

that it has since passed into the shape of a judgment does not relieve it from the effect of the injunction.

Besides, such a distinction would ruin the relator's case; for, on the ground of such a distinction, it would be pertinent to say that these respondents are not authorized or required by the ordinances of the city of Keokuk, or statutes of Iowa, which relator sets out in his petition, to levy a tax to pay any *judgment;* but, at best, only to pay railroad bonds and coupons.

It is true that the case cited was decided by only three of the five Judges; but the other two did not dissent, but being of counsel in matters connected with the case, did not sit in its hearing.

Again: The counsel says that the Ohio case differs from this, because in that case the decree for the injunction and the proceeding for the mandamus, were both in the same Court. But this distinction only strengthens the authority of the case for respondents. No consideration of avoiding injurious collision with the authority of another and independent Court could be urged in the Ohio case as can be in this case; but the writ was refused alone on the ground of justice due to the Commissioners. And this consideration is stronger in a case like the present, where the two contradictory writs are from different and independent Courts.

It will be observed that in the case cited the Ohio and Indiana Railroad Company was not a party to the injunction suit; and the Court say that the decree in the injunction suit, therefore, did not bind or conclude the Company by any of its findings; but that, nevertheless, it did have the effect, while it remained in force, to preclude the Company from having the peculiar remedy sought by the proceeding in mandamus. The counsel think that this is consistent.

A person is not bound or concluded by a judgment or decree,

unless the Court rendering the same had personal jurisdiction over him. The finding of such a judgment or decree cannot be plead against him, as *res adjudicata*. But he may, nevertheless, be indirectly affected by it, if he is in any way dependent, for a peculiar remedy which he may seek, upon the action of those who are bound by the decree, and that action is forbidden by the decree. The point is—not that the relator is bound by the decree, but that the respondents are bound by it, because the Court had personal jurisdiction over them. A party's remedy may be, and often is, indirectly affected by orders and decrees made by a Court which has no personal jurisdiction over him.

Thus in Peale vs. Phipps, 14 How. 372, Phipps and Bowers were not parties to the suit in the State Court, and yet that suit had the effect to preclude their execution from being levied on any of the assets of the Agricultural Bank, and obliged them, if they wished to reach any of the assets of their debtor, to go into the State Court.

In Freeman vs. Howe *et al.*, 24 How. 451, suitors in the State Court were precluded in the same way, by a suit in the Federal Court to which they were not parties, and compelled to seek their remedy in the Federal Court.

Ex parte Fleming, 4 Hill 581, is a case directly in point, and like the present involves the question of the jurisdiction of two independent Courts. Justice Cowen held that it was not for him to inquire whether the injunction was properly issued or not; it was enough for him to know that the Judge of the District Court of the United States has the power to issue and enforce the process of injunction like any other Chancellor—if there was a wrong in granting the injunction the remedy was in the District Court of the United States. So in this case: if there was a wrong in ordering the injunction, the remedy is in the Courts of Iowa. And the fact that the relator has no confidence in the

State Court, and that the Supreme Court of Iowa and the Supreme Court of the United States do not agree, does not alter the law. Justice Cowen's decision was the recognition of a comprehensive rule of law, founded not on comity, but necessity, to prevent injurious collisions between independent Courts, and to avoid the injustice of subjecting officers and citizens to conflicting jurisdictions.

We admit, that in this country the authority to issue the writ of mandamus does not exist as a pregrogative power of the Courts, but is derived by grant from the government through constitutions and enactments; but when the power to issue it is granted, the exercise of that power is to be governed by the common law rules. It so far partakes of the nature of a prerogative writ, that the Courts may withhold it, and should do so, if the issuing of it would be attended with hardship and injustice. Moses on Mandamus, 19 and 20; 9 Peters, 571; 5 Gilman, 243; 25 Barb., 216, and 29 Barb., 96.

The writ will not be granted against a person or officer who obeys a power which he is unable to resist. Or when it would subject those executing it to an action. Tapping on Mandamus, page 69, and cases there cited.

This Court cannot deliberately say, that respondents are in default, for obeying the injunction of the State Court. They have only obeyed a power which they could not resist. And unless this Court can remove that power out of the way, it has no right to compel respondents to incur the penalty of resisting it, even though relator's judgment may remain unpaid. It will not be the first time that the just jurisdiction of a State Court has legitimately precluded the collection of a judgment in a Federal Court. The United States Marshal cannot seize on execution property in the custody of a State Court, even though the defendant in execution may have no other property. Neither can these respon-

dents raise a fund for the payment of relator's judgment, by levying a tax on the property of the citizens of Keokuk, as long as the writ of the State Court forbids them to do so, and protects that property from such taxation.

All the difficulties and apparent conflict of jurisdictions, which surround the case, admit of an easy and obvious solution. It requires only the application of a familiar and comprehensive principle universally recognized by Courts of justice, viz: that between Courts of concurrent jurisdiction, the Court which first obtains jurisdiction over the subject matter or controversy, shall retain it, without interference or interruption from the co-ordinate Court. This rule is not founded on comity, but necessity. It is absolutely essential to the harmony of a complicated system like ours, composed as it is of State and Federal Courts, exercising, in many matters, concurrent jurisdiction over the same citizens, and co-extensive with the United States. It is just and equal to both jurisdictions, and prevents all injurious collisions between them. It opposes no obstruction to the efficient administration of justice. It denies to no party any remedy to which he is entitled, but directs him in what Court he must seek it. It does not regard one Court as fallible and the other infallible, but recognizing the possibility that Courts may err as well as differ, it does not require the citizen or officer to obey the conflicting orders of two equal and independent tribunals at the same time, with the certain liability to a process for contempt in one or the other.

This rule is not controverted by the relator's counsel. It is recognized in the following cases: Smith vs. McIver, 7 Wheaton, 532; Hagan vs. Lucas, 10 Peters, 400; Peale vs. Phipps, 14 How. 372; Peck vs. Jenniss, 7 Howard, 618; Taylor *et al.* vs. Carryl, 20 How., 583, (in the opinion of the Court, and also in the dissenting opinion); Freeman vs. Howe *et al.*, 24 How., 450; *Ex parte* Cabrera, 1 Wash. C. C. R., 932; and *Ex parte* Doerr, 3 How. 103; also *Ex parte* Fleming, 4 Hill.

If the application of this rule will not solve the difficulties which surround this case, and harmonize the conflicts which it threatens, then the case admits of no rational solution, and our judicial system must be left to the reproach of furnishing no rule to prevent the antagonism and collision of independent and concurrent jurisdictions, and to decide which the citizen shall obey. But there is no such defect. The rule stated solves all difficulty, prevents all collision, and leaves the duty of the citizen plain. It is founded on necessity, and approved by experience. It is an absurdity in physical science, to say that two bodies can occupy the same space at the same time. It is no less an absurdity in legal science to say that two equal and independent Courts can actually exercise jurisdiction over the same subject matter, or over the same person in regard to the same matter, at the same time.

It is an obvious inference from the nature of the rule, that it practically operates as a limitation on the jurisdiction and powers of both co-ordinate Courts. Each co-ordinate Court is often precluded from the exercise of powers which clearly lie within the scope of its concurrent jurisdiction; for these powers are all subject to the limitation that they must be exercised so as not to interfere with the just jurisdiction of the co-ordinate Court. The cases of *Ex parte* Fleming, 4 Hill, 581; *Ex parte* Doer, 3 How. 103; Taylor *et al* vs. Carryl, 24 How. 583; Freeman vs. Howe *et al.*, 24 How. 450, are all illustrations of this principle. Every Court unquestionably has jurisdiction to enforce its own judgments by execution; yet in Peale vs. Phipps, 14 How., 372, the Federal Court was precluded from levying its execution on any portion of the defendant's property, because his property was all in the custody of a receiver of a State Court. And although the plaintiff in that case, not being a citizen of Mississippi, had a right to sue in the Federal Court, yet the practical operation of the rule on which we are insisting, left him no remedy except in the State Courts. And the rule would still have held good even

if the plaintiff's claim in that case had consisted of railroad bonds, and the Courts of Mississippi had held such bonds invalid. Hence we contend that all that the counsel says in regard to the right of the relator to have his remedy in the Federal Court, and his right to have the payment of his judgment enforced by that Court, and in regard to the powers of that Court to issue the writ of mandamus is not pertinent to the defense set up by respondents—or at least not conclusive, unless he can further show, that all this can be done without encroaching on the just jurisdiction of the Courts of Iowa.

Now let us examine what that jurisdiction of the Courts of Iowa was, and when it attached.

The purpose of an injunction is to prevent injury, not to compensate it. It sometimes happens that a City Council, under color of State laws and ordinances, undertakes to levy an illegal tax. This would be a wrong to the tax-payers, and as the law provides a remedy for every wrong, there must be a remedy for this one. The only adequate remedy which they can have, is to apply to the State Court, which has jurisdiction over the property to protect it from illegal taxation, and also over those who are about to levy the tax, and also to construe the statutes under color of which the tax is to be levied, and pray the Court to enjoin the tax. Nor is it necessary in a suit to enjoin, to make the beneficiaries of the tax parties; for they may be uncertain, or unknown, or beyond the jurisdiction of the Court—as the counsel tries to show that the relator is in this case. It would be unjust that this should deprive the tax-payers of all remedy to prevent an illegal tax from being levied on their property. It is enough that those who are about to levy the tax are within the jurisdiction of the Court, and would be bound by its decree. But the tax-payers would have the right to bring such a suit whether the tax was legal or not, for they would have the right to submit that

very question to the decision of the Court, and that decision would bind the parties until it was reversed.

It was just such a case that was presented to the District Court of Lee county against these respondents. The object of that suit was to enjoin a tax which respondents were about to levy and collect under color of authority conferred on them by the laws of Iowa. If that object was not within the legitimate jurisdiction of the State Court, then it follows, that a State Court has no power to pass on the legality of a tax about to be levied under color of authority by that State, and by officers created by that State, and upon property within the limits of that State.

The object of the injunction suit in the State Court was not the cancellation of the railroad bonds. The cancellation of a written obligation in the hands of its owner, is a very different thing in law, from the inhibition of third parties from raising money in a certain way for the payment of that obligation. They may involve the same questions, and may practically produce the same result; but that does not make them identical in any legal sense. The question of the legality of a tax does not necessarily, but may, involve the legality of the purpose for which it is to be levied. The jurisdiction to try the legality of the tax includes the power of the Court to examine and decide every question on which the validity of the tax may depend; but the subject of the suit is still the legality of the tax, no matter on what ground it may be decided. The object of the injunction suit is shown by the relief which is prayed for and granted, and not the ground on which it is asked for and given. That which is actually done by the Court, is shown, not by what the decree finds, but by what it orders. The State Court did not undertake to cancel the bonds. That was not the legal effect of its decree. It did pass upon the question of the validity of the bonds, because that question was involved in the question of the validity of the tax

which it was asked to enjoin. In the legitimate exercise of its legitimate jurisdiction, and of its honest and best judgment, it held the tax, which it found that these respondents were about to levy, to be illegal, and enjoined it. This decision is not on trial, by appeal, before this Court, and, therefore, the discussion of its merits is not pertinent to this case. It is enough to say, that the Court of Iowa had the authority to make it, and to bind respondents by it.

The injunction suit was brought by the proper parties, and against the proper parties. The petitioners were seven tax-payers and owners of property in Keokuk, who sued for themselves and other citizens and tax-payers of Keokuk too numerous to be joined in the suit. The laws of Iowa expressly authorize this form of instituting such a suit. Revision of 1860, Section 2763. Their property was threatened with the levy of a tax which they claimed was illegal. They had the right to present the question of the legality of the tax to the State Court, and to invoke its protection against the alleged injury which was threatened. Their petition submitted a proper case to the decision of the State Court, and legitimately called into exercise the legitimate jurisdiction of that Court.

These respondents were the proper parties defendant to that suit, because they were the parties threatening to do the act which was complained of as an injury, and they alone had to be enjoined in order to prevent it. If a Court cannot try the legality of a tax and enjoin it, without first obtaining personal jurisdiction over all who are interested in having it levied, it would often happen that there would be no tribunal to try the legality of a tax, or to enjoin it, even though clearly and unquestionably illegal. It is true that the relator was not a party to the injunction suit, and, therefore, the decree in that suit does not bind or conclude him—the matter is not *res adjudicata* as to him. For example, if he should hereafter sue on his bonds—*even in the Courts of*

Iowa—that decree would not sustain as against him the plea of *res adjudicata.* But that decree, nevertheless, does have the effect to preclude him from having the particular remedy which he seeks in this case. First, because that decree effectually ties the hands of the respondents, and effectually prevents them from levying the tax; and, second, because it interposes the jurisdiction of the State Court between this Court and the respondents in regard to the levying the tax. If this proceeding had been consummated by the service of the peremptory writ of mandamus on these respondents, and the tax-payers had then commenced a suit to enjoin respondents from levying the tax, the respondents could have then set up the mandate and jurisdiction of this Court as a good defense to such injunction suit, in the same way in which they now set up the injunction and jurisdiction of the State Court as a defense to this suit. And it would not invalidate such a defense because the petitioners in such injunction suit had not been parties to the proceeding in mandamus.

The defense in this case, is not that the matter of controversy is *res adjudicata;* but it is, that in regard to the very subject matter of this suit, these Respondents have been subjected to, and are bound by, the adjudication of another and independent court. The purpose of this proceeding is, to have this Court exercise jurisdiction over the Respondents in regard to a certain subject matter, viz: The levying of a tax. And the answer is, that the State Court had obtained jurisdiction over Respondents, and had absolutely bound them by its decree in regard to this same identical subject matter; and that this jurisdiction of the State Court had not only been obtained, but consummated, before the institution of this present suit; and that, therefore, the Federal Court is precluded from exercising any jurisdiction over Respondents in the matter of levying the tax. This defence rests on no novel principle. It involves more than the collection of a tax. It involves the harmony and perfection of our judicial system. It is

no attempt to deprive the Federal Courts of any legitimate jurisdiction. The Federal Courts have a jurisdiction which is exclusive. No action of any State Court can affect that exclusive jurisdiction. So, the State Courts have an exclusive jurisdiction which cannot be affected by any action of a Federal Court. But on that middle ground where their jurisdictions overlap, there is no principle to prevent the shock of unseemly and injurious collisions, except the one which we are endeavoring to assert by this defense.

The allegations of the petition for the writ of mandamus in this case, and of Respondents' return to the alternative writ—which latter are admitted by the Relator's demurrer—show that the writ of injunction in State Court, against Respondents to enforce the this tax, was commenced before the suit on which Relator recovered judgment on his coupons. This suit, therefore, does not involve the point; whether the jurisdiction of the Federal Court over the subject matter and Respondents in this suit dates from the commencement of this suit of mandamus, or runs back to the commencement of the suit on which Relator recovered judgment on his coupons. Even if that question did arise, in this case, we know that other cases, directly involving this point, precede this one on the docket of this Court, in which this point will be argued by able counsel. And, as it is necessary to forward this argument at once, it is closed here, and respectfully submitted.

J. H. CRAIG,
Attorney for Respondents.

KEOKUK, IOWA, March 29, 1867.